MONTANA LEGISLATIVE HISTORY

Chapter 451 1993

Bill H 545 S _____ Original bill & history ✓ C

H. Committee on Business & Economic Development			S. Committee on Business & Industry		
Hearing Date(s)	Feb 16	✓ C	Hearing Date(s)	Mar 16	✓ C
		C		Mar 17	✓ C
		C			C
		C			C
Date Out	Feb 16	✓ C		Mar 17	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 545

INTRODUCED BY TUSS, LYNCH, DEBRUYCKER,
COCCHIARELLA, KENNEDY, T. NELSON, GAGE, MESAROS
BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
FEBRUARY 16, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
	POSTED ON CONSENT CALENDAR.
FEBRUARY 17, 1993	CONSENT CALENDAR, QUESTIONS AND ANSWERS.
	ENGROSSING REPORT.
FEBRUARY 18, 1993	THIRD READING, PASSED. AYES, 92; NOES, 6.
FEBRUARY 19, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
MARCH 18, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 19, 1993	SECOND READING, CONCURRED IN.
MARCH 20, 1993	THIRD READING, CONCURRED IN. AYES, 42; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

4/07 SIGNED BY GOVERNOR
CHAPTER NUMBER 289
EFFECTIVE DATE: 10/01/93

HB 544 INTRODUCED BY SMITH

INCREASE RESPONSIBILITY OF DEPARTMENT OF FAMILY SERVICES FOR PROTECTION OF ELDERLY MONTANANS

2/09 INTRODUCED
2/09 REFERRED TO HUMAN SERVICES & AGING
2/09 FIRST READING
2/09 FISCAL NOTE REQUESTED
2/12 HEARING
2/13 FISCAL NOTE RECEIVED
2/13 FISCAL NOTE PRINTED
2/16 COMMITTEE REPORT—BILL PASSED
2/25 MISSED TRANSMITTAL DEADLINE

HB 545 INTRODUCED BY TUSS, ET AL.

GENERALLY REVISE LAWS RELATING TO REGULATION OF INSURERS AND MOTOR CLUB SERVICE COMPANIES

BY REQUEST OF STATE AUDITOR

2/10	INTRODUCED		
2/10	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/10	FIRST READING		
2/16	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED		
2/16	PLACED ON CONSENT CALENDAR		
2/18	3RD READING PASSED	92	6
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & INDUSTRY		
3/16	HEARING		
3/18	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/19	2ND READING CONCURRED	47	0
3/20	3RD READING CONCURRED	42	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	85	12
4/02	3RD READING AMENDMENTS CONCURRED	93	6
4/13	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 451		
	EFFECTIVE DATE: 04/21/93—SECTIONS 33 & 38		
	EFFECTIVE DATE: 10/01/93—SECTIONS 1-32 & 34-37		

HB 546 INTRODUCED BY GILBERT, ET AL.

REVISE DEFINITION OF PUBLIC UTILITY FOR BILLING ERROR PURPOSES

2/10 INTRODUCED
2/10 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
2/10 FIRST READING
2/15 HEARING
2/16 TABLED IN COMMITTEE

House BILL NO. 545

INTRODUCED BY Tom Lynch

BY REQUEST OF THE STATE AUDITOR

Delwyn Gillan Cocchiarella Kennedy Tom Nelson Bob Brown

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE REGULATION OF INSURERS AND MOTOR CLUB SERVICE COMPANIES; REVISING THE EFFECTIVE DATE PROVISION FOR HAIL INSURANCE; AMENDING SECTIONS 33-1-316, 33-1-501, 33-2-302, 33-2-305, 33-2-307, 33-2-312, 33-2-313, 33-2-705, 33-2-708, 33-2-1113, 33-3-305, 33-4-101, 33-4-203, 33-11-104, 33-11-108, 33-14-201, 33-14-305, 33-15-303, 33-16-106, 33-17-231, 33-17-237, 33-20-101, 33-20-121, 33-20-127, 33-20-603, 33-22-101, 33-22-130, 33-22-131, 33-22-132, 33-22-201, 33-22-202, 33-22-1703, AND 80-2-203, MCA; REPEALING SECTIONS 33-17-206 AND 33-22-216, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-1-316, MCA, is amended to read:

"33-1-316. Testimony compelled -- immunity from prosecution. A person may not be excused from attending and testifying or producing any evidence upon any examination, investigation, or hearing conducted by or under authority of the commissioner on the ground that his the person's testimony or the evidence required of--him may tend to incriminate him or subject him the person to a penalty or forfeiture. However, compelled testimony or evidence compelled following a claim of privilege against self-incrimination or any information directly or indirectly derived from compelled testimony or evidence may not be used against the person in a criminal prosecution. The commissioner may grant immunity from prosecution for or on account of any act, occurrence, transaction, matter, or other thing concerning which a person is--compelled--to testify testifies if the commissioner determines that the ends of justice would be served by granting the additional immunity. Immunity does not extend to prosecution or punishment for false statements by the person that are contained in the-compelled testimony or evidence given under this part."

Section 2. Section 33-1-501, MCA, is amended to read:

"33-1-501. Filing and approval of forms. (1) No An insurance policy or annuity contract form, certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal certificate may not be delivered or issued for delivery in Montana unless the form has been filed with and approved by the commissioner and the regulatory official of the state of domicile of the insurer, if required. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of unique

HB 545 INTRODUCED BILL

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character designed for and used with relation to insurance upon a particular subject or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. ~~As-to-forms~~ Forms for use in property, marine (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages, ~~the filing required by this subsection~~ may be made filed by a rating organization on behalf of its members and subscribers, ~~but this provision does not prohibit~~ or by a member or subscriber ~~from filing a form~~ on its own behalf.

(2) The filing must be made not less than 60 days in advance of delivery. Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than an additional 60 days the period within which ~~he~~ the commissioner may approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any approval.

(3) An order of the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer.

(4) The commissioner may ~~by order~~ exempt from the requirements of this section, for so long as ~~he~~ the commissioner considers proper, an insurance document, form, or type of document or form specified ~~in the order~~ to which, in ~~his~~ the commissioner's opinion, this section may not practicably be applied or the filing and approval of which are, in ~~his~~ the commissioner's opinion, not desirable or necessary for the protection of the public.

(5) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is not subject to approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to ~~him~~ the commissioner for the purpose. The same standards apply to these forms as apply to forms for domestic use.

(6) This section and 33-1-502 do not apply to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

(7) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for group insurance policies effectuated and

delivered outside Montana but covering persons resident in Montana must be filed with the commissioner upon his request."

Section 3. Section 33-2-302, MCA, is amended to read:

"33-2-302. Conditions precedent to sale of surplus lines insurance. Insurance may be procured through a licensed surplus lines insurance producer from an unauthorized insurer if:

(1) the insurer is an eligible surplus lines insurer;

(2) ~~the full amount or kind of insurance cannot be obtained from authorized insurers. The full amount or kind of insurance may be procured from an eligible surplus lines insurer if the insurance producer makes a diligent search among the insurers who are authorized to transact and are actually transacting the particular kind and class of insurance in this state and cannot obtain the full amount or kind of insurance from an authorized insurer.~~ the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers;

(3) the producing insurance producer makes a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this

lesser market.

~~(3)~~(4) the insurance is not so procured for the purpose of securing ~~advantages either as to:~~

(a) a lower premium rate than would be accepted by an authorized insurer; or

(b) an advantage in terms of the insurance contract; and

~~(4)~~(5) all other requirements of this part are met."

Section 4. Section 33-2-305, MCA, is amended to read:

"33-2-305. Licensing of surplus lines insurance producer -- fee and bond. (1) A person may not procure a contract of surplus lines insurance with an unauthorized insurer unless he the person is licensed as a property, and casualty, ~~and surety~~ insurance producer and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance license to any qualified holder of a current property, and casualty, ~~and surety~~ insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner;

(c) been licensed as a property, and casualty, ~~and~~

surety insurance producer continuously for 5 years or more; and

(d) filed with the commissioner and thereafter for as long as the license remains in effect kept in force a bond in favor of the state of Montana in the amount of $10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that he the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice thereof of termination.

(3) The license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before March 1 shall pay a fine of $100 before the commissioner renews the license.

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance."

Section 5. Section 33-2-307, MCA, is amended to read:

"33-2-307. Requirements for eligible surplus lines insurers. (1) A surplus lines insurance producer may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) ~~$2.5 million on April 17, 1988, and $3.5 million on April 17, 1990. After April 17, 1990, an~~ $3 million. An insurer possessing less than $4 million ~~subcapital~~ capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon such factors as quality of management, capital, and surplus

of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than $3 million.

(ii) in the case of Lloyd's or another similar unincorporated group of alien individual insurers, the insurer maintains a trust fund of not less than $50 million as security to the full amount ~~thereof~~ of capital and surplus for all policyholders and creditors in the United States of each member of the group. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and ~~such~~ the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. ~~Such~~ The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date ~~which at no time~~ that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer no more than 6 months after the close of the period reported upon (or quarterly if considered necessary by the commissioner), and which is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of

domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. No An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(i) is in unsound financial condition;

(ii) is no longer eligible under subsections (1) through (3);

(iii) has willfully violated the laws of this state; or

(iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(b) The commissioner shall promptly mail notice of all such declarations to each surplus lines insurance producer.

(5) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."

Section 6. Section 33-2-312, MCA, is amended to read:

"33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee. (1) A surplus lines insurance producer who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable to a penalty of $25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing ~~him~~ the commissioner. The penalty when collected, unless collected by a justice's court, ~~shall~~ must be paid to the state treasurer and placed to the credit of the general fund. The surplus lines insurance producer license is also subject to revocation as provided in 33-2-313.

(2) If a surplus lines insurance producer does not pay the stamping fee provided for in 33-2-321 ~~before it is due~~, the commissioner or the surplus lines advisory organization formed pursuant to 33-2-321 may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid."

Section 7. Section 33-2-313, MCA, is amended to read:

"33-2-313. Revocation or suspension of producer license. (1) The commissioner shall revoke or suspend any surplus lines insurance producer license, together with ~~his~~ any license as an insurance producer:

(a) if the insurance producer fails to file ~~his~~ an annual statement or to remit the tax as required by law;

(b) if the insurance producer fails to keep the records or to allow the commissioner to examine ~~his~~ the records, as required by law;

(c) if the insurance producer falsifies the affidavit required by 33-2-310(3);

~~(d) if the insurance producer removes the resident surplus lines insurance producer office from this state;~~

~~(e) if the insurance producer removes the resident surplus lines insurance producer office accounts and records from this state during the period during which the accounts and records are required to be maintained under 33-2-310(1);~~

~~(f)~~ (d) if the insurance producer closes the resident

surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

~~(g)~~ (e) if the insurance producer violates any provision of this part; or

~~(h)~~ (f) for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension or revocation of insurance producer licenses apply to suspension or revocation of a surplus lines insurance producer license.

(3) An insurance producer whose license has been so revoked or suspended may not again be so licensed within 1 year thereafter after revocation or suspension or until he the insurance producer pays all penalties and delinquent taxes that he owes are owed."

Section 8. Section 33-2-705, MCA, is amended to read:

33-2-705. Report on premiums and other consideration -- tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends,

refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to ~~such~~ property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from ~~such~~ the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to ~~such~~ the policies. As to title insurance, "premium" includes the total charge for ~~such~~ the insurance. ~~No~~ A deduction ~~shall~~ may not be made of the cash surrender values of policies. Considerations received on annuity contracts ~~shall~~ may not be included in

total direct premium income and ~~shall~~ are not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each ~~such~~ insurer shall pay to the commissioner a tax upon ~~such~~ the net premiums computed at the rate of 2 3/4%.

(3) That portion of the tax paid ~~hereunder~~ under this section by an insurer on account of premiums received for fire insurance ~~shall~~ must be separately specified in the report as required by the commissioner, for apportionment as provided by law. ~~Where~~ When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make ~~such~~ a reasonable allocation from ~~such~~ the entire premium to the fire portion of the coverage as ~~shall~~ must be stated in ~~such~~ the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section ~~shall~~ must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of $100 ~~a-day-for-each-day-the-tax-remains-unpaid--past--the due--date--or--1%--of--the--amount-owed-in-tax,-whichever-is greater~~ plus interest on the delinquent amount at the interest rate established in 31-1-107.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which such tax liability is accrued."

Section 9. Section 33-2-708, MCA, is amended to read:

"33-2-708. *Fees and licenses.* (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney

to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... $ 600.00

(B) foreign insurers 600.00

(ii) annual continuation of certificate of authority 600.00

(iii) reinstatement of certificate of authority 25.00

(iv) amendment of certificate of authority 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 25.00

(c) filing bylaws or amendment to bylaws where required 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) insurance producer's license:

(i) application for original license, including

issuance of license, if issued 15.00

(ii) appointment of insurance producer, each insurer 10.00

(iii) temporary license 15.00

(iv) amendment of license (excluding additions to license) or reissuance of master license 15.00

(f) nonresident insurance producer's license:

(i) application for original license, including issuance of license, if issued 100.00

(ii) appointment of insurance producer, each insurer 10.00

(iii) annual renewal of license 10.00

(iv) amendment of license (excluding additions to license) or reissuance of master license 15.00

(g) examination, if administered by the commissioner, for license as insurance producer, each examination 15.00

(h) surplus lines insurance producer license:

(i) application for original license and for issuance of license, if issued 50.00

(ii) annual renewal of license 50.00

(i) adjuster's license:

(i) application for original license and for issuance of license, if issued 15.00

(ii) annual renewal of license 15.00

(j) insurance vending machine license, each machine, each year 10.00

(k) commissioner's certificate under seal (except when on certificates of authority or licenses) 10.00

(l) copies of documents on file in the commissioner's office, per page ..... .50

(m) policy forms:

(i) filing each policy form 25.00

(ii) filing each application, certificate, enrollment form, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 100.00

(n) applications for approval of prelicensing education courses:

(i) reviewing initial application 150.00

(ii) periodic review 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected by--~~him~~ pursuant to Title 33 and the rules adopted under Title 33.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 10. Section 33-2-1113, MCA, is amended to read:

"33-2-1113. Transactions with affiliates -- standards. (1) Material transactions by registered insurers with their affiliates are subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payments received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts, and records of each party must ~~be so maintained as to~~ clearly and accurately disclose the precise nature and details of the transactions, including ~~such~~ any accounting information ~~as is~~ necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) (a) The following transactions involving a domestic insurer and a person in its holding company system may not

be entered into unless the insurer has notified the commissioner in writing of its intention to enter into a transaction and the commissioner has not disapproved it within at least 30 days prior to the transaction, or a shorter period as the commissioner may permit:

(i) sales, purchases, exchanges, loans or extensions of credit, guaranties, or investments if, as of the prior December 31, the transactions are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders; and

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(ii) loans or extensions of credit to a person who is not an affiliate if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in an affiliate of the insurer making the loans or extensions of credit if ~~such~~ the transactions, as of the prior December 31, are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets;

~~(C)~~(iii) reinsurance agreements or modifications to reinsurance agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the prior December 31, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer;

~~(D)~~(iv) all management agreements, service contracts, and cost-sharing arrangements; and

~~(E)~~(v) any material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

(b) Nothing in this subsection (2) is considered to authorize or permit a transaction that, in the case of an insurer that is not a member of the same holding company system, would otherwise be contrary to law.

(3) A domestic insurer may not enter into a transaction that is part of a plan or series of like transactions with a person within the holding company system if the purpose of those separate transactions is to avoid the statutory

threshold amount review. If the commissioner determines that the separate transactions were entered into over a 12-month period for the purpose of evading review, he the commissioner may exercise ~~his~~ authority under 33-2-1120.

(4) The commissioner, in reviewing a transaction pursuant to subsection (2), shall consider whether the transaction complies with the standards set forth in subsection (1) and whether it may adversely affect the interests of a policyholder.

(5) The commissioner must be notified within 30 days of an investment by a domestic insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

(6) For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, must be considered:

(a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) the extent to which the insurer's business is diversified among the several lines of insurance;

(c) the number and size of risks insured in each line

of business;

(d) the extent of the geographical dispersion of the insurer's insured risks;

(e) the nature and extent of the insurer's reinsurance program;

(f) the quality, diversification, and liquidity of the insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in subsidiaries made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in ~~his~~ the commissioner's judgment the investment so warrants."

Section 11. Section 33-3-305, MCA, is amended to read:

"33-3-305. Directors -- number and election. (1) The affairs of every domestic insurer ~~shall~~ must be managed by the number of directors fixed in the insurer's bylaws, which ~~shall~~ may not be less than 5 or more than 21 directors.

(2) Directors must be elected ~~from-and~~ by the members or stockholders of a domestic insurer, except as provided in

33-3-306, at such the time and place and for such the terms, not exceeding 3 years, as may be provided in the insurer's bylaws. A majority of directors must be elected from the members or stockholders of the domestic insurer.

(3) The term of a director shall extend until ~~his~~ a successor has been elected and has qualified."

Section 12. Section 33-4-101, MCA, is amended to read:

"33-4-101. Scope of chapter -- provisions applicable. (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings heretofore formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517~~,-and-all-amendments-thereto,~~ of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers heretofore formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625~~,-and-all-amendments-thereto,~~ of the Revised Codes of Montana, 1947;

(c) all insurers hereafter formed under this chapter.

(2) All such insurers qualifying under subsection (1) may be referred to as "farm mutual insurers".

(3) ~~Nothing--in--the~~ The insurance laws of this state ~~shall-be-deemed--to~~ do not apply to or govern, either

directly or indirectly, domestic farm mutual insurers except as contained or referred to in this chapter.

(4) The following chapters and sections of this title ~~also shall~~ apply to farm mutual insurers to the extent so applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of such the express provisions: parts 1, 2, 3, 4, and 7 of chapter 1; 33-2-112; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; chapter 2, part 13; 33-2-1212; 33-3-218; 33-3-308; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapter 18."

Section 13. Section 33-4-203, MCA, is amended to read:

"33-4-203. Approval of articles -- commencement of corporate existence. (1) Upon receipt ~~thereof~~ of proposed articles of incorporation, the commissioner shall forward the proposed articles of incorporation to the attorney general for examination. If the attorney general finds the articles to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States of America or of this state, he the attorney general shall make a certificate of the facts and return it with the proposed articles to the commissioner.

(2) If the commissioner ~~deems~~ considers the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be likely to mislead the public, he the commissioner shall reject the name applied for and shall notify the incorporators ~~thereof~~ of the rejection.

(3) When the proposed articles of incorporation have been approved by the attorney general, the commissioner shall likewise endorse ~~his~~ the commissioner's approval upon each set of the articles~~, file one set in his office,~~ and forward ~~the other three~~ four sets of articles to the incorporators. The incorporators shall file one of ~~such~~ the sets of articles with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, and one set with the county clerk of the county ~~wherein is located~~ in which the principal place of business of the corporation is located and shall pay to the secretary of state and the county clerk the customary filing fees. The remaining set of articles ~~shall~~ must be made a part of the corporation's records.

(4) The corporation ~~shall have~~ has legal existence as ~~such~~ upon the approval of the articles by the attorney general and the commissioner and completion of the filings referred to in subsection (3) above, but it ~~shall~~ may not transact business as an insurer until it has fulfilled the requirements for and has obtained a certificate of authority as provided in 33-4-505."

Section 14. Section 33-11-104, MCA, is amended to read:

"33-11-104. Risk retention groups not chartered in this

state. A risk retention group chartered in a state other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) a statement identifying the state or states where the risk retention group is chartered and authorized as a casualty insurer, date of chartering, its principal place of business, and such other information, including information on its membership, as the commissioner requires to verify that the risk retention group is qualified under 33-11-102(7);

(b) a copy of its plan of operation or a feasibility study and revisions of such the plan or study submitted to its state of domicile. However, this provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance that was defined in the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986, and that was offered before that date by a risk retention group that had been chartered and operated for not less than 3 years before that date; and

(c) a statement of registration that designates the

commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) A risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or by a qualified loss reserve specialist under criteria established by the national association of insurance commissioners;

(b) a copy of each examination of the risk retention group as certified by the insurance regulatory official of the state in which the examination was conducted or public official conducting the examination;

(c) upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) such any information as may be required to verify the group's continuing qualification as a risk retention group under 33-11-102(7).

(3) (a) All premiums paid for coverage within this state to risk retention groups are subject to taxation at the same rate and to the same interest, fines, and penalties for nonpayment that apply to foreign admitted insurers.

(b) To the extent that an insurance producer is used, he the insurance producer shall report and pay the taxes for the premiums for risks that he has are placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent that an insurance producer is not used or fails to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.

(4) Each risk retention group, its insurance producers, and its representatives shall comply with Title 33, chapter 18, part 2.

(5) Each risk retention group shall comply with the provisions of Title 33, chapter 18, part 2, regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such the conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Each risk retention group shall submit to an examination by the commissioner to determine its financial condition if the insurance regulatory official of the jurisdiction where the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner. The examination

LC 0868/01

must be coordinated to avoid unjustified repetition and be conducted in an expeditious manner in accordance with the national association of insurance commissioners examiners handbook.

(7) Each policy issued by a risk retention group must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by or operation of a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) A risk retention group is not allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of

whose members are insurers.

(10) A risk retention group may not offer insurance policy coverage declared unlawful by the Montana supreme court.

(11) A risk retention group not chartered in this state and doing business in this state must shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the insurance regulatory official of any state if there has been a finding of financial impairment after an examination under subsection (6).

(12) Upon completion of registration requirements, the commissioner shall issue to the risk retention group a proper certificate of registration."

Section 15. Section 33-11-108, MCA, is amended to read:

"33-11-108. Notice and registration requirements of purchasing groups. (1) A purchasing group that intends to do business in this state shall furnish notice to the commissioner that:

(a) identifies the state where the group is domiciled;

(b) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;

(c) identifies the insurer from which the purchasing group intends to purchase its insurance and the domicile of

the insurer;

(d) identifies the Montana-licensed insurance producer or Montana-licensed surplus ~~insurance~~ lines insurance producer through which the purchasing group intends to place its business;

(e) identifies the principal place of business of the purchasing group; and

(f) provides information required by the commissioner to verify that the purchasing group is qualified under 33-11-102(6).

(2) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process. However, such the requirements do not apply in the case of a purchasing group:

(a) (i) that was domiciled before April 2, 1986, in any state of the United States; and

(ii) that was domiciled on and after October 27, 1986, in any state of the United States;

(b) (i) that, before October 27, 1986, purchased insurance from an insurer licensed in any state; and

(ii) that, since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(c) that was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981

(15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986; and

(d) that does not purchase insurance that was not authorized for purposes of an exemption under the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986.

(3) Upon completion of registration requirements, the commissioner shall issue a proper certificate of registration to the purchasing group."

Section 16. Section 33-14-201, MCA, is amended to read:

"33-14-201. License required -- fee -- renewal of license. (1) Except as provided in subsection (4), no a person may not engage in the business of financing insurance premiums without first having obtained a license as a premium finance company from the commissioner. Any person who engages in the business of financing insurance premiums in the state without obtaining a license as provided under this chapter is, upon conviction, guilty of a misdemeanor.

(2) The annual license fee is $100. A license may be renewed as of January 1 each year, upon payment of the fee of $100. The license fee ~~shall~~ must be paid to the commissioner.

(3) The person to whom the license or the renewal thereof of the license is issued shall file sworn answers, subject to the penalties of perjury, to such any

interrogatories as the commissioner may require. The commissioner may, at any time, require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees, and he the commissioner may, in ~~his~~ the commissioner's discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if he ~~is~~ not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.

(4) ~~No person other than a savings and loan association, bank, trust company, or licensed finance company, credit union, or resident insurance producer who, within 15 days after entering into an insurance premium finance agreement, transfers the agreement to a licensee or to any of the organizations exempt under this subsection may engage in the business of entering into, acquiring, or holding insurance premium finance agreements unless licensed to do so by the commissioner.~~ This section does not apply to and a license is not required of:

(a) savings and loan associations, banks, trust companies, licensed finance companies, credit unions, and resident insurance producers; or

(b) a person who, within 15 days after entering into an insurance premium finance agreement, transfers the agreement to a licensee or to any of the organizations exempt under

this subsection (4)."

Section 17. Section 33-14-305, MCA, is amended to read:

"33-14-305. Return of unearned premiums. (1) Whenever a financed insurance contract is canceled by a person other than the insured, the insurer shall process cancellation of the financed insurance policy on a pro rata basis. The insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) If the crediting of the return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured, except that no a refund is not required if such the excess amounts to less than $1."

Section 18. Section 33-15-303, MCA, is amended to read:

"33-15-303. Contents of policies in general -- identification. (1) Every policy shall specify:

(a) the names of the parties to the contract;

(b) the subject of the insurance;

(c) the risks insured against;

(d) the time when the insurance thereunder under the policy takes effect and the period during which the insurance is to continue;

(e) the premium;

(f) the conditions pertaining to the insurance.

(2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid shall must be included.

(3) ~~Subsections--(1)--and-(2)-of-this-section-shall-not apply-as-to-surety-contracts-or-to-group-insurance-policies.~~

~~(4)~~ All policies and annuity contracts issued by insurers and the forms ~~thereof~~ of policies and annuity contracts filed with the commissioner shall must have printed thereon on the policy or annuity contract an appropriate designating letter or figure, or combination of letters or figures, or terms identifying the respective forms of policies or contracts, together with the year of adoption of such the form. Whenever any change is made in any such form, the designating letters, figures, or terms and year of adoption ~~thereon--shall~~ on the form must be correspondingly changed."

Section 19. Section 33-16-106, MCA, is amended to read:

"33-16-106. Examination by commissioner of rating organizations, admitted insurers, officers, managers, insurance producers, and employees -- expense. (1) (a) The commissioner ~~shall,-at-least-once-every-5-years,-and~~ may, as often as may be reasonable and necessary, make or cause to be made an examination of each licensed rating organization. He The commissioner may, as often as may be reasonable and

23

necessary, make or cause to be made an examination of any advisory organization or group, association, or other organization of insurers ~~which~~ that engages in joint underwriting or joint reinsurance.

(b) In lieu of ~~any---such~~ an examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state or by the national association of insurance commissioners.

(c) In examining any organization, group, or association pursuant to this section, the commissioner shall ascertain whether ~~such~~ an organization, group, or association and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

(2) The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether ~~such~~ the insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable ~~thereto~~ to it. ~~Such~~ The examination ~~shall~~ may not be a part of a periodic general examination participated in by representatives of more than one state.

(3) The officers, managers, insurance producers, and

employees of any ~~such~~ organization, group, association, or insurer may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation, together with all data, statistics, and information of every kind and character collected or considered by ~~such~~ an organization, group, association, or insurer in the conduct of the operations to which ~~such~~ the examination relates.

(4) The reasonable cost of any examination authorized by this article ~~shall~~ must be paid by the organization, group, association, or insurer to be examined."

Section 20. Section 33-17-231, MCA, is amended to read:

"33-17-231. Appointment of insurance producers -- continuation and termination. (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer, and pay the fee therefor as stated in 33-2-708. ~~The term--of--the-appointment-is-for-1-year-and-runs-from-June-1 of-each-year-through-May-31-of-the-succeeding-year.~~

(2) ~~Subject-to-annual-renewal-by-the-insurer,-each-such~~ Each appointment ~~shall-remain~~ remains in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the

insurer or the insurance producer. Termination of the insurer's authority in Montana also terminates the appointment.

(3) Annually, ~~--prior--to-May-1,-each-insurer-shall-file with-the-commissioner-an-alphabetical-list-in--duplicate--of the-names-and-addresses-of-all-its-insurance-producers-whose appointments---in--this--state--are--to--remain--in--effect, accompanied-by-payment-of-the-annual-renewal-fee-as-provided in-33-2-708.-At-the-same-time-the-insurer--shall--also--file with--the-commissioner-a-termination-report-of-all-insurance producers-whose-appointments-in-this-state-are-not-to-remain in-effect.~~

~~(4)~~ Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of ~~such~~ the termination to the commissioner and to the insurance producer. The commissioner may require ~~of--the--insurer~~ reasonable proof that the insurer has given ~~such~~ notice to the insurance producer.

~~(5)~~(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause ~~thereof~~ of termination. Any information or statement contained in the notice of termination ~~shall~~ is not be admissible as evidence in any action or proceeding against

the insurer or any representative ~~thereof~~ of the insurer by or ~~in~~ on behalf of any person affected by ~~such~~ the termination."

Section 21. Section 33-17-237, MCA, is amended to read:

"33-17-237. Notification of violation or appointment termination. (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department. ~~If-the-reason-of-the termination-is-for-any-of-the-causes-listed-in-33-17-1001-or 33-25-301,-the-insurer-shall-notify-the-insurance-department of--the--reason--and--the-insurer-shall,-upon-request-of-the insurance--department,---provide---information,---documents, records,--or--other--data-pertaining-to-the-termination-that may-be-used-by-the-insurance-department-in-any-action--taken pursuant-to-Title-33,-chapter-1,-part-7.~~

(2) If the reason for the termination is any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall immediately notify the insurance department of the reason.

(3) Whenever an insurance company or an employee or representative of the company has reasonable cause to believe that a person has violated 33-17-1001 or 33-25-301, it is the duty of that entity, upon acquiring the knowledge, to notify the insurance department and provide the insurance department with a complete statement of all relevant facts

and circumstances.

(4) The insurer, employee, or representative shall, upon request of the insurance department, provide information, documents and records, or other data pertaining to the alleged violation or termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 17, part 10.

~~(2)~~(5) Any information, documents, records, or other data provided pursuant to this section is privileged and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith."

Section 22. Section 33-20-101, MCA, is amended to read:

"33-20-101. Scope. (1) Except as provided in subsection (2), parts 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

(2) ~~Section~~ Sections 33-20-114 and 33-20-131 ~~applies~~ apply to group life insurance and group annuities."

Section 23. Section 33-20-121, MCA, is amended to read:

"33-20-121. Prohibited provisions -- limitations on liability. (1) A policy of life insurance may not be delivered or issued for delivery in this state if it

contains a provision:

(a) for a period shorter than that provided by statute within which an action at law or in equity may be commenced on the policy; or

(b) that excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified in the policy in the event of death:

(i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces or of any act or hazard of war or action or of service in the military, naval, or air forces or in civilian forces auxiliary thereto or from any cause while a member of military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in military action;

(ii) as a result of aviation or any air travel or flight;

(iii) as a result of a specified hazardous occupation or occupations;

(iv) while the insured is a resident outside the continental United States and Canada; or

(v) within 2 years from the date of issue of the policy as a result of suicide, while seriously mentally ill or

otherwise. If a life insurance policy contains a dependent rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

(2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide that in the event of death under the circumstances to which the exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method on the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy ~~provides~~ does not provide for ~~no---such~~ nonforfeiture benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy)~~,~~ ~~with~~ or by any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

(3) This section does not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(4) This section does not prohibit a provision that in the opinion of the commissioner is more favorable to the

policyholder than a provision permitted by this section."

Section 24. Section 33-20-127, MCA, is amended to read:

"33-20-127. Life insurance policy with long-term care provision or accelerated benefits provision -- ~~policy~~ summary required. At the time of policy delivery, a ~~policy~~ summary must be delivered to the insured for an individual life insurance policy that provides long-term care benefits or accelerated benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the ~~policy~~ summary upon the applicant's request but no later than the time of policy delivery. In addition to complying with all applicable requirements, the summary must also include:

(1) an explanation of how the long-term care benefits or accelerated benefits interact with other components of the policy, including deductions from death benefits;

(2) an illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits, if any, for each covered person;

(3) any exclusions, reductions, and limitations on ~~benefits~~ of long-term care benefits and accelerated benefits; and

(4) if applicable to the policy type:

(a) a disclosure of the effects of exercising other rights under the policy;

(b) a disclosure of guaranties related to long-term care costs of insurance charges; and

(c) current and projected maximum lifetime benefits."

Section 25. Section 33-20-603, MCA, is amended to read:

"33-20-603. Separate accounts for life insurance or annuities. (1) Subject to the provisions of subsection (2), a ~~domestic~~ life insurer may establish one or more separate accounts and may allocate to ~~such~~ those accounts the amounts necessary to provide for life insurance or annuities and benefits incidental ~~thereto~~ to the life insurance or annuities, payable in fixed or variable amounts, or both. The amounts allocated to ~~such~~ the accounts may include without limitation proceeds applied under optional modes of settlement or under dividend options.

(2) Separate accounts for life insurance or annuities established under the provisions of subsection (1) are subject to the following:

(a) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account must be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(b) Except as provided for reserves for guaranteed benefits and funds in subsection (c):

(i) amounts allocated to a separate account and accumulations ~~thereon~~ on the separate account may be

LC 0868/01

invested and reinvested in any class of investment authorized under Title 33, chapter 2, part 8, if limitations under 33-2-806 on investments in stocks are not applicable;

(ii) the investments in the separate account or accounts may not be considered in applying the investment limitations otherwise applicable to the investments of the insurer.

(c) Except with the approval of the commissioner and under conditions relating to investments and other prescribed matters ~~as--he--prescribes~~ that recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to amount and duration and for funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account.

(d) Unless otherwise approved by the commissioner, assets allocated to a separate account must be valued at their market value on the date of valuation or, if there is no readily available market, as provided under the terms of the contract or the rules or other written agreement applicable to that separate account; however, unless otherwise approved by the commissioner, the portion, if any, of the assets of that separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (c) must be valued in accordance with the laws and rules otherwise applicable to the insurer's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this part must be owned by the insurer, and the insurer may not be or hold itself out to be a trustee with respect to those amounts. If and to the extent provided under applicable contracts, that portion of the assets of a separate account equal to the reserves and other contract liabilities with respect to the account are not chargeable with liabilities arising out of any other business the insurer may conduct.

(f) (i) No A sale, exchange, or other transfer of assets may not be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(A) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; or

(B) the transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value and the transfer of securities is approved by the commissioner.

(ii) The commissioner may approve other transfers among these accounts if, in his the commissioner's opinion, transfers would not be inequitable.

(g) To the extent an insurer considers it necessary to

comply with any applicable federal or state laws, the insurer, with respect to any separate account, including without limitation any separate account that is a management investment company or a unit investment trust account, may provide, for persons having an interest therein in the account, appropriate voting and other rights and special procedures for the conduct of the business of that account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business of that account."

Section 26. Section 33-22-101, MCA, is amended to read:

"33-22-101. Exceptions to scope. Nothing in parts Parts 1 through 4 of this chapter, except 33-22-107, 33-22-111, 33-22-114, 33-22-125, 33-22-130, 33-22-131, 33-22-132, [section 34], and 33-22-304, shall do not apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage therein;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or contracts supplemental contracts that thereto which contain

only such those provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard such contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance."

Section 27. Section 33-22-130, MCA, is amended to read:

"33-22-130. Coverage for adopted children from time of placement -- preexisting conditions. (1) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state ~~and--that provides--coverage--for--a--family--member-of-the-insured-or subscriber~~ must provide coverage for an adopted child of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from

placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means placement for adoption as defined in 40-8-103."

Section 28. Section 33-22-131, MCA, is amended to read:

"33-22-131. Coverage for phenylketonuria treatment. (1) Each group or individual disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state ~~and--that--provides--coverage--for--a--family--member-of-the insured--or--subscriber~~ must provide coverage for the treatment of phenylketonuria.

(2) For ~~the---pupose~~ purposes of this section, "treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

(3) These services are subject to the terms of the applicable group or individual disability policy, certificate, or membership contract that establishes durational limits, dollar limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally."

Section 29. Section 33-22-132, MCA, is amended to read:

"33-22-132. Coverage for mammography examinations. (1) Each group or individual disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state ~~and-that-provides--coverage--for--a--family--member--of--the insured--or--subscriber~~ must provide minimum mammography examination coverage.

(2) For the purpose of this section, "minimum mammography examination" means:

(a) one baseline mammogram for a woman who is 35 years of age or older and under 40 years of age;

(b) a mammogram every 2 years for any woman who is 40 years of age or older and under 50 years of age or more frequently if recommended by the woman's physician; and

(c) a mammogram each year for a woman who is 50 years of age or older.

(3) ~~These-services-are-subject-to~~ A minimum $70 payment or the actual charge if the charge is less than $70 must be made for each mammography examination performed before the application of the terms of the applicable group or individual disability policy, certificate of insurance, or membership contract that establish durational limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally. ~~A--minimum--$70--payment--must--be--made--for--each--mammography examination-performed.~~"

Section 30. Section 33-22-201, MCA, is amended to read:

"33-22-201. Format and content. ~~No~~ A policy of disability insurance ~~shall~~ may not be delivered or issued for delivery to any person in this state unless it otherwise complies with this code and complies with the following:

(1) The entire money and other considerations ~~therefor~~ for the policy ~~shall~~ must be expressed ~~therein~~ in the policy.

(2) The time when the insurance takes effect and terminates ~~shall~~ must be expressed ~~therein~~ in the policy.

(3) ~~It-shall-purport-to~~ The policy may insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who ~~shall-be-deemed~~ is the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age ~~which-shall~~ that may not exceed 19 years, and any other person dependent upon the policyholder.

(4) The style, arrangement, and overall appearance of the policy ~~shall~~ may not give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers ~~shall~~ must be plainly printed in lightfaced type of a style in general use, the size of which ~~shall~~ must be uniform and

not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

(5) The "text" ~~shall~~ must include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.

(6) The exceptions and reductions of indemnity ~~shall~~ must be set forth in the policy and, other than those contained in 33-22-204 through 33-22-215 and 33-22-217 through 33-22-231, ~~shall~~ must be printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions", except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such the exception or reduction ~~shall~~ must be included with the benefit provision to which it applies.

(7) Each such form, including riders and endorsements, ~~shall~~ must be identified by a form number in the lower left-hand corner of the first page thereof of the form.

(8) The policy ~~shall~~ may not contain no a provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such the portion is set forth in full in the policy, except in the case of the incorporation of or reference to a

statement of rates or classification of risks or short-rate table filed with the commissioner.

(9) Each individual disability policy, except for a single-premium nonrenewable policy, issued for delivery in this state on or after January 1, 1980, ~~shall~~ must contain a notice stating in substance that if the person to whom the policy is issued is not satisfied for any reason, he the person is permitted to return the policy within 10 days of its delivery, or such a longer period as the policy may provide, and to have refunded the amount of the premium paid. A policy returned pursuant to this subsection is void from the beginning."

Section 31. *Section 33-22-202, MCA, is amended to read:*

"33-22-202. Required provisions — captions — omissions — substitutions — order. (1) Except as provided in subsection (2) below, each such policy delivered or issued for delivery to any person in this state must contain the provisions specified in 33-22-204 through 33-22-215, in the words in which the same provisions appear, except that the insurer may, at its option, substitute for one or more of such the provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision must be preceded individually by the applicable caption shown or, at the

option of the insurer, by ~~such~~ the appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) If any ~~such~~ provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from ~~such~~ the policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in ~~such~~ a manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(3) The provisions ~~which~~ that are the subject of 33-22-204 through 33-22-215 and 33-22-217 through 33-22-232 or any corresponding provisions which are used ~~in lieu~~ thereof in accordance with ~~such~~ the cited sections ~~shall~~ must be printed in the consecutive order of the provisions in ~~such~~ the sections or, at the option of the insurer, any ~~such~~ provision may appear as a unit in any part of the policy with other provisions to which it may be logically related, provided that the resulting policy ~~shall~~ is not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued."

Section 32. Section 33-22-1703, MCA, is amended to

read:

"33-22-1703. Definitions. As used in this part, the following definitions apply:

(1) "Emergency services" means services provided after suffering an accidental bodily injury or the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that without immediate medical attention the subscriber or insured could reasonably expect that:

(a) ~~his~~ the subscriber's or insured's health would be in serious jeopardy;

(b) ~~his~~ the subscriber's or insured's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(2) "Health benefit plan" means the health insurance policy or subscriber arrangement between the insured or subscriber and the health care insurer that defines the covered services and benefit levels available.

(3) "Health care insurer" means:

(a) an insurer that provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a health maintenance organization as defined in 33-31-102;

(d) a fraternal benefit society as described in 33-7-105; or

(e) ~~an administrator as defined in 33-17-102; or~~

~~(f)~~ any other entity regulated by the commissioner that provides health coverage.

(4) "Health care services" means health care services or products rendered or sold by a provider within the scope of the provider's license or legal authorization or services provided under Title 33, chapter 22, part 7.

(5) "Insured" means an individual entitled to reimbursement for expenses of health care services under a policy or subscriber contract issued or administered by an insurer.

(6) "Preferred provider" means a provider or group of providers who have contracted to provide specified health care services.

(7) "Preferred provider agreement" means a contract between or on behalf of a health care insurer and a preferred provider.

(8) "Provider" means an individual or entity licensed or legally authorized to provide health care services or services covered within Title 33, chapter 22, part 7.

(9) "Subscriber" means a certificate holder or other person on whose behalf the health care insurer is providing or paying for health care coverage."

LC 0868/01

Section 33. Section 80-2-203, MCA, is amended to read:

"80-2-203. Participation in program -- tax. (1) Any ~~taxpayers~~ A taxpayer or ~~associations~~ an association of taxpayers engaged in the growing of crops other than specified ~~herein~~ in this part or other agricultural or horticultural products subject to injury or destruction by hail may, by ~~their~~ individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject thereto to this part. ~~and in such event such~~ The risks may be classified by the board and suitable levies may be imposed as ~~may be~~ agreed upon by the board and ~~such~~ the taxpayers. ~~whereupon such~~ The taxpayers ~~shall be~~ are entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) Every farmer taxpayer who signifies ~~his~~ a desire to become subject to the provisions of this part shall file in the office of the county assessor the properly filled out form not later than August 15 and ~~shall be~~ is chargeable with the tax ~~hereinafter~~ provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of this part. ~~Such~~ The application for hail insurance ~~shall be~~ is in full force and effect at ~~noon~~ 12:01 a.m. the day ~~immediately~~ following the acceptance of the

same application by the county assessor.

(3) This part ~~shall~~ may not be so construed as to empower anyone except the actual owner of the land to make such the land subject to the hail tax provided in this part."

NEW SECTION. **Section 34.** Preexisting conditions. (1) A policy or certificate of disability insurance may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 5 years preceding the effective date of coverage of an insured person. The condition may only be excluded for a maximum of 12 months.

(2) An insurer may use an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on that application, perform underwriting in accordance with the insurer's established underwriting standards.

NEW SECTION. **Section 35.** Repealer. Sections 33-17-206 and 33-22-216, MCA, are repealed.

NEW SECTION. **Section 36.** Codification instruction. [Section 34] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 34].

NEW SECTION. **Section 37.** Effective date. [Section 33

and this section] are effective on passage and approval.

-End-

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0462	DRISCOLL, JERRY 2/04	2/18	REVISE BEER SIGN LAW	TABLED ON 02/18 VOTE: 18-0		
HB0464	FISHER, MARJORIE 2/04	2/11	EXTEND ANTI-FRAUD & ELIMINATE CERTAIN DUAL REGULATION SECURITY LAWS	PASS AS AMENDED 2/11 VOTE: 17-0		2/12
HB0465	RYAN, WILLIAM 2/04	2/18	REVISE MEDICARE SUPPLEMENT INSURANCE LAWS	DO PASS 2/18 VOTE: 18-0		2/19
HB0476	MILLS, NORM 2/05	2/12	REMOVE 2 YR TIME LIMIT TO COMPILE PROPERTY APPRAISER EXPERIENCE FOR LICENSE	DO PASS 2/17 VOTE: 18-0		2/17
HB0493	DOWELL, TIM 2/05	2/12	INCREASING PENALTIES FOR VIOLATION OF INSURANCE LAWS	DO PASS 2/12 VOTE: 18-0		2/13
HB0509	PAVLOVICH, BOB 2/06	2/12	ALLOW INSTRUCTIONS FOR DISPOSITION OF HUMAN REMAINS	PASS AS AMENDED 2/12 VOTE: 16-2		2/13
HB0513	DOWELL, TIM 2/06	2/11	REQUIRING INSURANCE COMMISSIONER TO ENSURE INSURANCE CONSUMER PROTECTION	PASS AS AMENDED 2/11 VOTE: 17-0		2/12
HB0538	FOSTER, MIKE 2/09	2/15	CLARIFY TELEPHONE PROMOTION	DO PASS 2/15 VOTE: 18-0		2/16
HB0543	EWER, DAVID 2/09	2/16	AUTHORIZE FIDUCIARY INVESTMENT IN INVESTMENT MANAGEMENT COMPANY	PASS AS AMENDED 2/16 VOTE: 18-0		2/16
HB0545	TUSS, CARLEY 2/10	2/16	GENERALLY REVISE INSURANCE LAWS	DO PASS 2/16 VOTE: 18-0		2/16
HB0546	GILBERT, BOB 2/10	2/15	REVISE DEFINITION OF PUBLIC UTILITY FOR BILLING ERROR PURPOSES	TABLED ON 02/16 VOTE: 13-5		
HB0548	STRIZICH, BILL 2/13	2/18	PROHIBIT DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS AND LICENSE RETAIL SALES	PASS AS AMENDED 2/18 VOTE: 16-2		2/19

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN BENEDICT, on February 16, 1993, at 7:15 A.M.

ROLL CALL

Members Present:
Rep. Steve Benedict, Chairman (R)
Rep. Sonny Hanson, Vice Chairman (R)
Rep. Bob Bachini (D)
Rep. Joe Barnett (R)
Rep. Ray Brandewie (R)
Rep. Vicki Cocchiarella (D)
Rep. Fritz Daily (D)
Rep. Tim Dowell (D)
Rep. Alvin Ellis (R)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Dick Knox (R)
Rep. Don Larson (D)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carley Tuss (R)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon, Legislative Council
Claudia Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 543, HB 545, HB 577 AND HB 575
Executive Action: HB 543, HB 545, HB 575, HB 577, and HB 155

HEARING ON HB 543

Opening Statement by Sponsor:

REP. DAVE EWER, House District 45, Helena, said HB 543 will enable trust companies to invest in open or closed management

EXECUTIVE ACTION ON HB 575

Motion: REP. BRANDEWIE MOVED HB 575 DO PASS.

Discussion: None

Motion/Vote: The question was called. Voice vote was taken. Motion carried unanimously.

Vote: HB 575 DO PASS. Motion carried 18 - 0.

EXECUTIVE ACTION ON HB 577

Motion: REP. ELLIS MOVED HB 577 DO PASS.

Discussion: REP. BRANDEWIE proposed an amendment to strike section 5, subsection (5), and made the motion to adopt the amendment.
EXHIBIT 5

REP. PAVLOVICH said he agrees with REP. BROWN to eliminate the 30 day time period and insert "a reasonable time frame".

REP. DAILY moved to strike section 5. Voice vote was taken. Motion carried 11 - 7 with REPS. COCCHIARELLA, DOWELL, TUSS, STELLA JEAN HANSEN, BACHINI, ELLIS, AND MILLS voting no.

REP. SIMON proposed an amendment on page 13, section 8, to clarify that foreign corporations would not have to call themselves professional corporations. REP. TUSS called the question. Voice vote was taken. Motion carried unanimously.

REP. BRANDEWIE moved to adopt the auditor's amendment on page 4, lines 7, 24, and 25, and page 12, line 25, and page 13, line 1. Paul Verdon said it changes the language for serving and mailing. REP. BRANDEWIE called the question. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. ELLIS MOVED HB 577 DO PASS AS AMENDED. REP. DAILY called the question. Voice vote was taken. Motion carried unanimously.

Vote: HB 577 DO PASS AS AMENDED. Motion carried 18 - 0.

HEARING ON HB 545

Opening Statement by Sponsor:

REP. CARLEY TUSS, House District 35, Black Eagle, said HB 545 is at the request of the state auditor's office. It is a comprehensive document that will revise the state insurance laws.

She said the revisions include number changes, definition changes, and sections that address only federal regulations. It increases the flexibility for the state auditor's operation and for the companies' operation. She said it alters the approach to conform the areas between the domestic and alien agents.

Proponents' Testimony:

Mark O'Keefe, State Auditor, said this bill is a housekeeping bill. He said his office has worked with the consumer groups, the insurance industry, and attorneys to cleanup the code. He said there are big changes to the bill because it deals with Title 33, which is a big code.

Mark Nelson, State Auditor's Office, said he is the licensing administrator of the insurance department. He talked about the various changes that were made, stating that a lot of them needed to be changed because some of the sections that were codified did not meet the legislative intent in the past. He urged a do pass.

Bill Jensen, general counsel for Blue Cross/Blue Shield of Montana (BC/BS, said BC/BS supports the housekeeping measures in HB 545. He thanked the commissioner's office for allowing them the opportunity to participate in the cleanup language of this bill. He urged a do pass.

Gene Phillips, National Association of Independent Insurers, Kalispell, said the association supports HB 545. He also appeared on behalf of **Tom Hopgood, representing the Health Insurance Association of America**, who also supports HB 545.

Larry Akey, representing the Montana Association of Life Underwriters, said the underwriters association supports HB 545.

Roger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, said the association supports HB 545. He thanked the insurance department for approving the bill in advance and providing some input. He said the bill will resolve some issues that have been open for four years, and will now bring Montana in line with other states. HB 545 will repeal a section that was used when the insurance companies had the single licensing law.

Jacqueline Lenmark, representing American Insurance Association, said AIA supports HB 545.

Ralph Peck, Deputy Director of the Montana Department of Agriculture, thanked Mark O'Keefe for working with them and the state hail board in this housekeeping bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

REP. TUSS closed urging the committee to give HB 545 a do pass recommendation.

EXECUTIVE ACTION ON HB 545

Motion: REP. DAILY MOVED HB 545 DO PASS.

Discussion: None

Motion/Vote: REP. MILLS called the question. Voice vote was taken. Motion carried unanimously.

Vote: HB 545 DO PASS. Motion carried 18 - 0.

EXECUTIVE ACTION ON HB 543

Motion: REP. COCCHIARELLA MOVED HB 543 DO PASS.

Discussion: REP. BACHINI moved to adopt an amendment on page 2, line 1. Voice vote was taken. Motion carried 17 - 1 with REP. BRANDEWIE voting no. EXHIBIT 4

Motion/Vote: REP. ELLIS MOVED HB 543 DO PASS AS AMENDED. Voice vote was taken. Motion carried unanimously.

Vote: HB 543 DO PASS AS AMENDED. Motion carried 18 - 0.

EXECUTIVE ACTION ON HB 546

Motion: REP. ELLIS MOVED HB 546 DO PASS.

Discussion: REP. KNOX said this bill comes from an isolated situation. The problem is not widespread enough for it to be in this committee. The local co-ops have grievance procedures in their by-laws to take care of this at the local level. He did not want to see this placed under the PSC.

REP. SONNY HANSON said this problem is not isolated. There are a lot of meter problems, and this is the reason why the state passed the law to force all utilities, gas and electric, to have a limited time in their paybacks. He said maybe Title 35 would be a more appropriate placement than the PSC.

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL DATE 2-16-93

NAME	PRESENT	ABSENT	EXCUSED
REP. ALVIN ELLIS	✓		
REP. DICK KNOX	✓		
REP. NORM MILLS	✓		
REP. JOE BARNETT	✓		
REP. RAY BRANDEWIE	✓		
REP. JACK HERRON	✓		
REP. TIM DOWELL	✓		
REP. CARLEY TUSS	✓		
REP. STELLA JEAN HANSEN	✓		
REP. BOB PAVLOVICH	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRITZ DAILY	✓		
REP. BOB BACHINI	✓		
REP. DON LARSON	✓		
REP. BRUCE SIMON	✓		
REP. DOUG WAGNER	✓		
REP. SONNY HANSON, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT, CHAIRMAN	✓		

HR:1993
wp.rollcall.man

HOUSE STANDING COMMITTEE REPORT

February 16, 1993

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 545 (first reading copy -- white) do pass and be placed on consent calendar.

Signed: _____

Steve Benedict, Chair

Committee Vote:

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Ec. COMMITTEE BILL NO. HB 545

DATE Feb 16, 1993 SPONSOR(S) C. Tuss

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
MARK E. NELSON, Helena	State Auditor's Office	✓	
Bill Ogson	Blue Cross Blue Shield	✓	
LARRY AKEY	MT ASSOC OF LIFE UNDERWRITERS	✓	
Roger McGlenn	INDEPENDENT INS. AGENTS ASSOC OF MT	✓	
Mark O'Keefe	State Auditor	✓	
GENE PHILLIPS	NAII	✓	
TOM HOPGOOD	HIAA	✓	
Jacqueline Lenmark	AIA	✓	
Ralph Peck	MT Dept of Ins	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

CHAIRMAN--J.D. LYNCH
NORMAL SCHEDULE==> SITE: ROOM 410 DAYS: M,T,W,T,F TIME: 10:00 A.M.

SECRETARY-KRISTIE WOLTER

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0513	2/20	3/10		CONCUR		3/10
DOWELL, TIM			REQUIRING INSURANCE COMMISSIONER TO ENSURE INSURANCE CONSUMER PROTECTION			
HB0538	2/22	3/16		CONCUR		3/17
FOSTER, MIKE			CLARIFY TELEPHONE PROMOTION			
HB0543	2/22	3/23		CONCUR		3/24
EWER, DAVID			AUTHORIZE FIDUCIARY INVESTMENT IN INVESTMENT MANAGEMENT COMPANY			
HB0545	2/20	3/16		CONCUR AS AMENDED		3/18
TUSS, CARLEY			GENERALLY REVISE INSURANCE LAWS			
HB0575	2/22	3/24		CONCUR		3/26
DEBRUYCKER, ROGER			REVISE FARM MUTUAL INSURANCE LAWS			
HB0577	2/22	3/11		CONCUR		3/13
BROWN, DAVE			REVISE AND CLARIFY CORPORATION LAWS			
HB0581	3/01	3/19		CONCUR AS AMENDED		3/22
RICE, SHEILA			CREATE A STATE HOUSING TASK FORCE			
HB0594	3/01	3/18		CONCUR		3/20
LARSON, DON			CLARIFY BEER AND WINE LICENSE TRANSFER OBLIGATIONS FOR CREDIT PURCHASES			
HB0596	3/01	3/19		CONCUR		3/24
WISEMAN, WILLIAM			RECIPROCITY FOR TRUST COMPANIES			
HB0619	3/01	3/19		CONCUR AS AMENDED		3/26
WHALEN, TIM			CLARIFY HEALTH CARE LIEN LAW			
HB0635	3/01	3/23		CONCUR		3/26
FAGG, RUSSELL			ALLOW SEC. OF STATE TO REMOVE IMPROPER OR FRAUDULENT LIEN FILINGS			

49

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on March 16, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. John Brenden (R)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Tom Hager (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 538, HB 433, HB 349, HB 545
Executive Action: HB 538, HB 273

HEARING ON HB 538

Opening Statement by Sponsor:

Representative Mike Foster, House District 32 stated HB 538 would allow customers to choose a package of features which would include call waiting. He stated call waiting is not a competitive service, but a monopoly service. He stated the offering of call waiting to a customer also allows the customer to receive promotional discounts. He stated the Public Service Commission (PSC) would be able to review and approve each

HEARING ON HB 545

Opening Statement by Sponsor:

Senator J.D. Lynch, SD 35, presented HB 545 for Representative Carly Tuss. He stated HB 545 was a clean-up bill and added he would let the proponents explain it.

Proponents' Testimony:

Mark O'Keefe, State Auditor, Insurance Commissioner, stated HB 545 was a "true" clean-up bill. He stated HB 545 would renumber the section and clean-up the language. He stated there was a request for an additional amendment which would strike section MCA 15-1-505. He stated MCA 15-1-505 has been ignored for at least 30 years and should be removed.

Jacqueline Lenmark, American Insurance Association, stated her support of HB 545.

Roger McGlenn, Independent Insurance Agents Association, stated his support of HB 545. He also stated Larry Akey, Montana Association of Life Underwriters would like to go on the record in support of HB 545.

Kendra Kawaguci, National Association of Independent Insurers, stated her support of HB 545.

Mike Murphy, Montana Department of Agriculture, stated his support of HB 545.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Gage asked Mr. Campbell if there was anything in HB 545 which would be considered more than clean-up. Mr. Campbell stated HB 545 was strictly clean-up of old codes and language.

Closing by Sponsor:

Senator Lynch closed on HB 545.

Announcement:

Senator Lynch asked the Committee for a moment of silence in memory of Gene Phillips from the National Association of

Independent Insurers. Mr. Phillips passed away from a heart attack on March 13, 1993.

EXECUTIVE ACTION ON HB 273

Motion/Vote:

Senator Christiaens moved HB 273 BE AMENDED (591525SC.San). The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Mesaros moved HB 273 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:45 a.m.

SENATOR J.D. LYNCH, Chair

KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business & Industry DATE 3/11/93

NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christiaens	✓		
Senator Brenden	✓		
Senator Gage	✓		
Senator Hager			✓
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Bruski-Maus	✓		
Senator Wilson	✓		

DATE 3/16/93

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: HB 349, 433, 538, 545

Name	Representing	Bill No.	Check One Support	Oppose
[illegible]	MAE			
Dan Mulcahy	Mont. Board of Horseracing	HB 433		✓
Gloria Hermanson	Dail Gamble with the Lady	HB 433		✓
Dan Walker	US WEST	HB 538	✓	
Janet Harper	Human Societies	HB 433		✓
Roger McGlenn	IIAM	HB 545	✓	
MARK E NELSON	St. Auditor	HB545	✓	
Mike Murphy	Dept. of Ag.	H545	✓	
Jacqueline Hennark	Am. Ins. Assoc	HB 349 HB 545	✓	✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on March 17, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. John Brenden (R)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Tom Hager (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Bill Wilson (D)

Members Excused: Senator Hager, Senator Christiaens, Senator Mesaros

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 371, HB 383, HB 449
Executive Action: HB 314, HB 545

HEARING ON HB 371

Opening Statement by Sponsor:

Representative Nelson, House District 19, stated the Board of Public Accountants (BPA) asked her to bring HB 371 before the legislature. She stated the format of the Uniform Certified Public Accountant (CPA's) Examination is going to change in May of 1994. She stated HB 371 would provide for the continual licensure of Licensed Public Accountant's (LPA's) under the new

EXECUTIVE ACTION ON HB 545

Motion/Vote:

Senator Kennedy moved HB 545 BE AMENDED (Exhibit #6). The motion carried UNANIMOUSLY.

Motion/Vote:

Senator Kennedy moved HB 545 BE CONCURRED IN AS AMENDED. The motion carried UNANIMOUSLY.

EXECUTIVE ACTION ON HB 314

Motion/Vote:

Senator Kennedy moved HB 314 BE CONCURRED IN. The motion carried UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:15 a.m.

SENATOR J.D. LYNCH, Chair

KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business and Industry DATE 3/17/93

NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christiaens			✓
Senator Brenden	✓		
Senator Gage	✓		
Senator Hager			✓
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros			✓
Senator Rea	✓		
Senator Bruski-Maus	✓		
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

March 17, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 545 (first reading copy -- blue), respectfully report that House Bill No. 545 be amended as follows and as so amended be concurred in.

Signed: _____
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, line 8.
Following: "SECTIONS"
Insert: "15-16-601,"

2. Title, line 15.
Following: "SECTIONS"
Insert: "15-1-505,"
Following: "33-17-206"
Insert: ","

3. Page 61, following line 18.
Insert: "Section 35. Section 15-16-601, MCA, is amended to read:

"15-16-601. Taxes or penalties illegally collected or duplicate taxes to be refunded. (1) (a) A taxpayer is entitled to a refund on:

(i) taxes, interest, penalties, or costs paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(ii) the taxes paid for which a refund is allowed under 15-16-612 or 15-16-613; or

(iii) the portion of taxes paid that were mistakenly computed on government bonus or subsidy received by the taxpayer.

(b) Subject to the provisions in subsections (4) and (5), the county treasurer may, by order of the board of county commissioners, pay the refund to the taxpayer.

(2) (a) The refund applies to any payment that has been made to the state treasurer as provided in 15-1-504 if the board of county commissioners determines that a portion of the money paid should be refunded as provided in this section.

(b) The board of county commissioners may order the county treasurer to refund to the taxpayer the portion of the taxes, interest, penalties, and costs paid to the state treasurer.

~~(c) The county clerk and recorder shall, at the time for filing the report required by 15-1-505, certify to the state auditor, in the form as the state auditor may prescribe, the amounts refunded. In the next settlement of the county treasurer~~

~~with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts refunded.~~

(3) When a part of the taxes, interest, penalties, or costs referred to in this section were levied in behalf of a school district or municipal or other public corporation and collected by the county treasurer, the taxes must be refunded upon the order of the board of county commissioners.

(4) (a) An order for the refund of any taxes, interest, penalties, or costs under this section may not be made except upon a claim filed by the taxpayer who has paid the taxes, interest, penalties, or costs or his guardian or, in case of his death, by his executor or administrator.

(b) A taxpayer may file a claim for taxes, interest, penalties, or costs paid during the immediately preceding 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(c) Except as provided in subsections (6) and (7), if a refund pursuant to subsection (1) is ordered, the board of county commissioners shall order a refund for taxes illegally collected or for any duplicate taxes paid during the immediately preceding 10 years regardless of when the taxes were first illegally collected or when the duplicate taxes were first paid.

(5) (a) In the order to refund taxes as provided in subsection (4)(c), the board of county commissioners shall determine the method of repayment. The board may:

(i) refund the entire amount due the taxpayer within 60 days after the date of the order; or

(ii) refund the amount due the taxpayer in annual installments, for a period not to exceed 10 years.

(b) If the refund is made in annual installments as provided in subsection (5)(a)(ii), the taxpayer is entitled to interest on the unpaid balance at the greatest interest rate in effect on October 1 of each year of the installment period received on public money invested by the county as provided in Title 7, chapter 6, part 2; Title 7, chapter 6, part 27; or 17-6-204.

(c) In satisfying the requirements of subsection (5)(a)(ii), the first annual installment must be paid within 60 days after the date of the order by the board of county commissioners. Subsequent annual installments must be paid on the first business day following October 1 of the year the installment is due.

(d) The treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the annual installment of the taxpayer refund and costs for which the taxing jurisdiction is proratably responsible.

(6) The board of county commissioners shall refund any tax, penalty, or interest collected as a result of an error in the

description or location of real property or improvements or for any duplicate taxes paid as determined by the department of revenue. The refund is subject to the provisions of subsections (4) and (5).

(7) The board of county commissioners shall refund any net or gross proceeds tax, penalty, or interest when the department of revenue notifies the board that an overpayment occurred. The department shall determine the amount of overpayment. The refund is subject to the provisions of subsections (4) and (5), but no refund may be granted for any taxes paid more than 5 years prior to the date the claim was received.

(8) All refunds ordered to be paid by the board of county commissioners must be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made from the fund.

(9) Upon the entering of judgment under 15-2-306, the county commissioners of the affected county shall order a refund of the portion of the taxes that the state tax appeal board has judged should be refunded.""
Renumber: subsequent sections

4. Page 61, line 19.
Following: "Sections"
Insert: "15-1-505,"
Following: "33-17-206"
Insert: ","

-END-

Amendments to House Bill No. 545
Third Reading Copy

Requested by Representative Tuss
For the Committee on Business and Industry

Prepared by Bart Campbell
March 16, 1993

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 3/17/93
BILL NO. HB 545

1. Title, line 8.
Following: "SECTIONS"
Insert: "15-16-601,"

2. Title, line 15.
Following: "SECTIONS"
Insert: "15-1-505,"
Following: "33-17-206"
Insert: ","

3. Page 61, following line 18.
Insert: "Section 35. Section 15-16-601, MCA, is amended to read:

"15-16-601. Taxes or penalties illegally collected or duplicate taxes to be refunded. (1) (a) A taxpayer is entitled to a refund on:

(i) taxes, interest, penalties, or costs paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(ii) the taxes paid for which a refund is allowed under 15-16-612 or 15-16-613; or

(iii) the portion of taxes paid that were mistakenly computed on government bonus or subsidy received by the taxpayer.

(b) Subject to the provisions in subsections (4) and (5), the county treasurer may, by order of the board of county commissioners, pay the refund to the taxpayer.

(2) (a) The refund applies to any payment that has been made to the state treasurer as provided in 15-1-504 if the board of county commissioners determines that a portion of the money paid should be refunded as provided in this section.

(b) The board of county commissioners may order the county treasurer to refund to the taxpayer the portion of the taxes, interest, penalties, and costs paid to the state treasurer.

~~(c) The county clerk and recorder shall, at the time for filing the report required by 15-1-505, certify to the state auditor, in the form as the state auditor may prescribe, the amounts refunded. In the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts refunded.~~

(3) When a part of the taxes, interest, penalties, or costs referred to in this section were levied in behalf of a school district or municipal or other public corporation and collected by the county treasurer, the taxes must be refunded upon the order of the board of county commissioners.

(4) (a) An order for the refund of any taxes, interest, penalties, or costs under this section may not be made except

upon a claim filed by the taxpayer who has paid the taxes, interest, penalties, or costs or his guardian or, in case of his death, by his executor or administrator.

(b) A taxpayer may file a claim for taxes, interest, penalties, or costs paid during the immediately preceding 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(c) Except as provided in subsections (6) and (7), if a refund pursuant to subsection (1) is ordered, the board of county commissioners shall order a refund for taxes illegally collected or for any duplicate taxes paid during the immediately preceding 10 years regardless of when the taxes were first illegally collected or when the duplicate taxes were first paid.

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(b) If the refund is made in annual installments as provided in subsection (5)(a)(ii), the taxpayer is entitled to interest on the unpaid balance at the greatest interest rate in effect on October 1 of each year of the installment period received on public money invested by the county as provided in Title 7, chapter 6, part 2; Title 7, chapter 6, part 27; or 17-6-204.

(c) In satisfying the requirements of subsection (5)(a)(ii), the first annual installment must be paid within 60 days after the date of the order by the board of county commissioners. Subsequent annual installments must be paid on the first business day following October 1 of the year the installment is due.

(d) The treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the annual installment of the taxpayer refund and costs for which the taxing jurisdiction is proratably responsible.

(6) The board of county commissioners shall refund any tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for any duplicate taxes paid as determined by the department of revenue. The refund is subject to the provisions of subsections (4) and (5).

(7) The board of county commissioners shall refund any net or gross proceeds tax, penalty, or interest when the department of revenue notifies the board that an overpayment occurred. The department shall determine the amount of overpayment. The refund is subject to the provisions of subsections (4) and (5), but no refund may be granted for any taxes paid more than 5 years prior to the date the claim was received.

(8) All refunds ordered to be paid by the board of county commissioners must be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make transfers from other county funds and from state, school district, and other public corporation funds in his possession as

may be necessary to reimburse the county general fund for payments made from the fund.

(9) Upon the entering of judgment under 15-2-306, the county commissioners of the affected county shall order a refund of the portion of the taxes that the state tax appeal board has judged should be refunded.""

{*Internal References to 15-16-601:*
15-16-602 (2)x *15-16-612x* *15-16-613x* *15-24-920x*
20-15-403x}

Renumber: subsequent sections

4. Page 61, line 19.
Following: "Sections"
Insert: "15-1-505,"
Following: "33-17-206"
Insert: ","

HB 0545/02

HOUSE BILL NO. 545

INTRODUCED BY TUSS, LYNCH, DEBRUYCKER,

COCCHIARELLA, KENNEDY, T. NELSON, GAGE, MESAROS

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE REGULATION OF INSURERS AND MOTOR CLUB SERVICE COMPANIES; REVISING THE EFFECTIVE DATE PROVISION FOR HAIL INSURANCE; AMENDING SECTIONS 15-16-601, 33-1-316, 33-1-501, 33-2-302, 33-2-305, 33-2-307, 33-2-312, 33-2-313, 33-2-705, 33-2-708, 33-2-1113, 33-3-305, 33-4-101, 33-4-203, 33-11-104, 33-11-108, 33-14-201, 33-14-305, 33-15-303, 33-16-106, 33-17-231, 33-17-237, 33-20-101, 33-20-121, 33-20-127, 33-20-603, 33-22-101, 33-22-130, 33-22-131, 33-22-132, 33-22-201, 33-22-202, 33-22-1703, AND 80-2-203, MCA; REPEALING SECTIONS 15-1-505, 33-17-206, AND 33-22-216, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-1-316, MCA, is amended to read:

"**33-1-316. Testimony compelled -- immunity from prosecution.** A person may not be excused from attending and testifying or producing any evidence upon any examination, investigation, or hearing conducted by or under authority of the commissioner on the ground that ~~his~~ the person's testimony or the evidence required ~~of--him~~ may tend to incriminate ~~him~~ or subject ~~him~~ the person to a penalty or forfeiture. However, ~~compelled~~ testimony or evidence compelled following a claim of privilege against self-incrimination or any information directly or indirectly derived from compelled testimony or evidence may not be used against the person in a criminal prosecution. The commissioner may grant immunity from prosecution for or on account of any act, occurrence, transaction, matter, or other thing concerning which a person ~~is--compelled-to testify~~ testifies if the commissioner determines that the ends of justice would be served by granting the additional immunity. Immunity does not extend to prosecution or punishment for false statements by the person that are contained in ~~the-compelled~~ testimony or evidence given under this part."

Section 2. Section 33-1-501, MCA, is amended to read:

"**33-1-501. Filing and approval of forms.** (1) ~~No~~ An insurance policy or annuity contract form, certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal certificate may not be delivered or issued for delivery in Montana unless the form has been filed with and approved by the commissioner and the regulatory official of the state of domicile of the insurer, if required. This provision does not apply to surety bonds

or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. ~~As-to-forms~~ Forms for use in property, marine (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages~~,--the filing--required--by--this-subsection~~ may be ~~made~~ filed by a rating organization on behalf of its members and subscribers~~,--but--this--provision-does-not-prohibit~~ or by a member or subscriber ~~from-filing-a-form~~ on its own behalf.

(2) The filing must be made not less than 60 days in advance of delivery. Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than an additional 60 days the period within which ~~he~~ the commissioner may approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any approval.

(3) An order of the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the

insurer.

(4) The commissioner may ~~by--order~~ exempt from the requirements of this section, for so long as ~~he~~ the commissioner considers proper, an insurance document, form, or type of document or form specified ~~in-the-order~~ to which, in ~~his~~ the commissioner's opinion, this section may not practicably be applied or the filing and approval of which are, in ~~his~~ the commissioner's opinion, not desirable or necessary for the protection of the public.

(5) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is not subject to approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to ~~him~~ the commissioner for the purpose. The same standards apply to these forms as apply to forms for domestic use.

(6) This section and 33-1-502 do not apply to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

(7) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in

Montana for group insurance policies effectuated and delivered outside Montana but covering persons resident in Montana must be filed with the commissioner upon ~~his~~ request."

Section 3. Section 33-2-302, MCA, is amended to read:

"**33-2-302. Conditions precedent to sale of surplus lines insurance.** Insurance may be procured through a licensed surplus lines insurance producer from an unauthorized insurer if:

(1) the insurer is an eligible surplus lines insurer;

(2) ~~the--full--amount--or--kind--of-insurance-cannot-be obtained-from-authorized-insurers.--The-full-amount--or--kind of--insurance-may-be-procured-from-an-eligible-surplus-lines insurer-if-the-insurance-producer-makes--a--diligent--search among--the--insurers--who-are-authorized-to-transact-and-are actually--transacting--the--particular--kind--and--class--of insurance-in-this-state-and-cannot-obtain-the-full-amount-or kind-of-insurance-from-an-authorized-insurer;~~ the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers;

(3) the producing insurance producer makes a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

~~(3)~~(4) the insurance is not ~~so~~ procured for the purpose of securing ~~advantages--either--as--to~~:

(a) a lower premium rate than would be accepted by an authorized insurer; or

(b) an advantage in terms of the insurance contract; and

~~(4)~~(5) all other requirements of this part are met."

Section 4. Section 33-2-305, MCA, is amended to read:

"**33-2-305. Licensing of surplus lines insurance producer -- fee and bond.** (1) A person may not procure a contract of surplus lines insurance with an unauthorized insurer unless ~~he~~ the person is licensed as a property~~,~~ and casualty~~,--and--surety~~ insurance producer and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance license to any qualified holder of a current property~~,~~ and casualty~~,--and--surety~~ insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner;

(c) been licensed as a property, and casualty, ~~and surety~~ insurance producer continuously for 5 years or more; and

(d) filed with the commissioner and ~~thereafter~~ for as long as the license remains in effect kept in force a bond in favor of the state of Montana in the amount of $10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that ~~he~~ the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice ~~thereof~~ of termination.

(3) The license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before March 1 shall pay a fine of $100 before the commissioner renews the license.

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance."

Section 5. Section 33-2-307, MCA, is amended to read:

"**33-2-307. Requirements for eligible surplus lines insurers.** (1) A surplus lines insurance producer may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) ~~$2.5 million on April 1, 1988, and $3.5 million on April 1, 1990. After April 1, 1990,~~ an $3 million. An insurer possessing less than $4 million ~~subcapital~~ capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon

such factors as quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than $3 million.

(ii) in the case of Lloyd's or another similar unincorporated group of alien individual insurers, the insurer maintains a trust fund of not less than $50 million as security to the full amount ~~thereof~~ of capital and surplus for all policyholders and creditors in the United States of each member of the group. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of

subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and ~~such~~ the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. ~~Such~~ The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date ~~which at no time~~ that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer no more than 6 months after the close of the period reported upon (or quarterly if considered necessary by the commissioner), and which is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm

licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. ~~No~~ An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(i) is in unsound financial condition;

(ii) is no longer eligible under subsections (1) through (3);

(iii) has willfully violated the laws of this state; or

(iv) does not make reasonably prompt payment of just

losses and claims in this state or elsewhere.

(b) The commissioner shall promptly mail notice of all ~~such~~ declarations to each surplus lines insurance producer.

(5) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."

Section 6. Section 33-2-312, MCA, is amended to read:

"33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee. (1) A surplus lines insurance producer who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable to a penalty of $25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing ~~him~~ the commissioner. The penalty when collected, unless collected by a justice's court, ~~shall~~ must be paid to the state treasurer and placed to the credit of the general fund. The surplus lines insurance producer license is also subject to

revocation as provided in 33-2-313.

(2) If a surplus lines insurance producer does not pay the stamping fee provided for in 33-2-321 ~~before it is due~~, the commissioner or the surplus lines advisory organization formed pursuant to 33-2-321 may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid."

Section 7. Section 33-2-313, MCA, is amended to read:

"33-2-313. **Revocation or suspension of producer license.** (1) The commissioner shall revoke or suspend any surplus lines insurance producer license, together with ~~his~~ any license as an insurance producer:

(a) if the insurance producer fails to file ~~his~~ an annual statement or to remit the tax as required by law;

(b) if the insurance producer fails to keep the records or to allow the commissioner to examine ~~his~~ the records, as required by law;

(c) if the insurance producer falsifies the affidavit required by 33-2-310(3);

~~(d) if the insurance producer removes the resident surplus lines insurance producer office from this state;~~

~~(e) if the insurance producer removes the resident surplus lines insurance producer office accounts and records from this state during the period during which the accounts and records are required to be maintained under 33-2-310(1);~~

~~(f)~~(d) if the insurance producer closes the ~~resident~~ surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

~~(g)~~(e) if the insurance producer violates any provision of this part; or

~~(h)~~(f) for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension or revocation of insurance producer licenses apply to suspension or revocation of a surplus lines insurance producer license.

(3) An insurance producer whose license has been ~~so~~ revoked or suspended may not again be ~~so~~ licensed within 1 year ~~thereafter~~ after revocation or suspension or until ~~he~~ the insurance producer pays all penalties and delinquent taxes that ~~he owes~~ are owed."

Section 8. Section 33-2-705, MCA, is amended to read:

33-2-705. Report on premiums and other consideration -- tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums ~~so~~ received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form ~~as~~ prescribed by the commissioner showing total direct premium income, including policy, membership, and

other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to ~~such~~ property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from ~~such~~ the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to ~~such~~ the policies. As to title insurance, "premium" includes the total charge for ~~such~~ the insurance. ~~No~~ A deduction ~~shall~~ may not be made of the cash surrender values of policies. Considerations

received on annuity contracts ~~shall~~ may not be included in total direct premium income and ~~shall~~ are not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) ~~above~~, each ~~such~~ insurer shall pay to the commissioner a tax upon ~~such~~ the net premiums computed at the rate of 2 3/4%.

(3) That portion of the tax paid ~~hereunder~~ under this section by an insurer on account of premiums received for fire insurance ~~shall~~ must be separately specified in the report as required by the commissioner, for apportionment as provided by law. ~~Where~~ When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make ~~such~~ a reasonable allocation from ~~such~~ the entire premium to the fire portion of the coverage as ~~shall~~ must be stated in ~~such~~ the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section ~~shall~~ must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and

taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of $100 ~~a-day-for-each-day-the-tax-remains-unpaid-past-the due-date-or-1%-of-the--amount--owed--in--tax,--whichever--is greater~~ plus interest on the delinquent amount at the interest rate established in 31-1-107.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which ~~such~~ tax liability is accrued."

Section 9. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws,

financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... $ 600.00

(B) foreign insurers 600.00

(ii) annual continuation of certificate of authority 600.00

(iii) reinstatement of certificate of authority 25.00

(iv) amendment of certificate of authority 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 25.00

(c) filing bylaws or amendment to bylaws where required 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) insurance producer's license:

(i) application for original license, including issuance of license, if issued 15.00

(ii) appointment of insurance producer, each insurer 10.00

(iii) temporary license 15.00

(iv) amendment of license (excluding additions to license) or reissuance of master license 15.00

(f) nonresident insurance producer's license:

(i) application for original license, including issuance of license, if issued 100.00

(ii) appointment of insurance producer, each insurer 10.00

(iii) annual renewal of license 10.00

(iv) amendment of license (excluding additions to license) or reissuance of master license 15.00

(g) examination, if administered by the commissioner, for license as insurance producer, each examination 15.00

(h) surplus lines insurance producer license:

(i) application for original license and for issuance of license, if issued 50.00

(ii) annual renewal of license 50.00

(i) adjuster's license:

(i) application for original license and for issuance of license, if issued 15.00

(ii) annual renewal of license 15.00

(j) insurance vending machine license, each machine, each year 10.00

(k) commissioner's certificate under seal (except when on certificates of authority or licenses) 10.00

(l) copies of documents on file in the commissioner's office, per page ..... .50

(m) policy forms:

(i) filing each policy form 25.00

(ii) filing each application, certificate, enrollment form, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 100.00

(n) applications for approval of prelicensing education courses:

(i) reviewing initial application 150.00

(ii) periodic review 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected ~~by him~~ pursuant to Title 33 and the rules adopted under

Title 33.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 10. Section 33-2-1113, MCA, is amended to read:

"**33-2-1113. Transactions with affiliates -- standards.** (1) Material transactions by registered insurers with their affiliates are subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payments received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts, and records of each party must ~~be--so--maintained-as-to~~ clearly and accurately disclose the precise nature and details of the transactions, including ~~such~~ any accounting information ~~as-is~~ necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) (a) The following transactions involving a domestic

insurer and a person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into a transaction and the commissioner has not disapproved it within at least 30 days prior to the transaction, or a shorter period as the commissioner may permit:

(i) sales, purchases, exchanges, loans or extensions of credit, guaranties, or investments if, as of the prior December 31, the transactions are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders; and

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(ii) loans or extensions of credit to a person who is not an affiliate if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in an affiliate of the insurer making the loans or extensions of credit if ~~such~~ the transactions, as of the prior December 31, are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of

its surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets;

~~(C)~~(iii) reinsurance agreements or modifications to reinsurance agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the prior December 31, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer;

~~(D)~~(iv) all management agreements, service contracts, and cost-sharing arrangements; and

~~(E)~~(v) any material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

(b) Nothing in this subsection (2) is considered to authorize or permit a transaction that, in the case of an insurer that is not a member of the same holding company system, would otherwise be contrary to law.

(3) A domestic insurer may not enter into a transaction that is part of a plan or series of like transactions with a person within the holding company system if the purpose of

those separate transactions is to avoid the statutory threshold amount review. If the commissioner determines that the separate transactions were entered into over a 12-month period for the purpose of evading review, ~~he~~ the commissioner may exercise ~~his~~ authority under 33-2-1120.

(4) The commissioner, in reviewing a transaction pursuant to subsection (2), shall consider whether the transaction complies with the standards set forth in subsection (1) and whether it may adversely affect the interests of a policyholder.

(5) The commissioner must be notified within 30 days of an investment by a domestic insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

(6) For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, must be considered:

(a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) the extent to which the insurer's business is diversified among the several lines of insurance;

(c) the number and size of risks insured in each line of business;

(d) the extent of the geographical dispersion of the insurer's insured risks;

(e) the nature and extent of the insurer's reinsurance program;

(f) the quality, diversification, and liquidity of the insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in subsidiaries made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any ~~such~~ investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in ~~his~~ the commissioner's judgment the investment so warrants."

Section 11. Section 33-3-305, MCA, is amended to read:

"**33-3-305. Directors -- number and election.** (1) The affairs of every domestic insurer ~~shall~~ must be managed by the number of directors fixed in the insurer's bylaws, which ~~shall~~ may not be less than 5 or more than 21 directors.

(2) Directors must be elected ~~from and~~ by the members

or stockholders of a domestic insurer, except as provided in 33-3-306, at ~~such~~ the time and place and for ~~such~~ the terms, not exceeding 3 years, as may be provided in the insurer's bylaws. A majority of directors must be elected from the members or stockholders of the domestic insurer.

(3) The term of a director shall extend until ~~his~~ a successor has been elected and has qualified."

Section 12. Section 33-4-101, MCA, is amended to read:

"**33-4-101. Scope of chapter -- provisions applicable.** (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings ~~heretofore~~ formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517~~, and all amendments thereto,~~ of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers ~~heretofore~~ formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625~~, and all amendments thereto,~~ of the Revised Codes of Montana, 1947;

(c) all insurers ~~hereafter~~ formed under this chapter.

(2) All ~~such~~ insurers qualifying under subsection (1) may be referred to as "farm mutual insurers".

(3) ~~Nothing in the~~ The insurance laws of this state

~~shall--be--deemed--to~~ do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as contained or referred to in this chapter.

(4) The following chapters and sections of this title ~~also--shall~~ apply to farm mutual insurers to the extent ~~so~~ applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of ~~such~~ the express provisions: parts 1, 2, 3, 4, and 7 of chapter 1; 33-2-112; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; chapter 2, part 13; 33-2-1212; 33-3-218; 33-3-308; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapter 18."

Section 13. Section 33-4-203, MCA, is amended to read:

"**33-4-203. Approval of articles -- commencement of corporate existence.** (1) Upon receipt ~~thereof~~ of proposed articles of incorporation, the commissioner shall forward the proposed articles of incorporation to the attorney general for examination. If the attorney general finds the articles to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States of America or of this state, ~~he~~ the attorney general shall make a certificate of the facts and return it with the proposed articles to the commissioner.

(2) If the commissioner ~~deems~~ considers the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be

likely to mislead the public, ~~he~~ the commissioner shall reject the name applied for and shall notify the incorporators ~~thereof~~ of the rejection.

(3) When the proposed articles of incorporation have been approved by the attorney general, the commissioner shall likewise endorse ~~his~~ the commissioner's approval upon each set of the articles~~, file one set in his office~~, and forward ~~the--other--three~~ four sets of articles to the incorporators. The incorporators shall file one of ~~such~~ the sets of articles with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, and one set with the county clerk of the county ~~wherein is located~~ in which the principal place of business of the corporation is located and shall pay to the secretary of state and the county clerk the customary filing fees. The remaining set of articles ~~shall~~ must be made a part of the corporation's records.

(4) The corporation ~~shall have~~ has legal existence ~~as such~~ upon the approval of the articles by the attorney general and the commissioner and completion of the filings referred to in subsection (3) ~~above~~, but it ~~shall~~ may not transact business as an insurer until it has fulfilled the requirements for and has obtained a certificate of authority as provided in 33-4-505."

Section 14. Section 33-11-104, MCA, is amended to read:

"33-11-104. Risk retention groups not chartered in this state. A risk retention group chartered in a state other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) a statement identifying the state or states where the risk retention group is chartered and authorized as a casualty insurer, date of chartering, its principal place of business, and ~~such~~ other information, including information on its membership, as the commissioner requires to verify that the risk retention group is qualified under 33-11-102(7);

(b) a copy of its plan of operation or a feasibility study and revisions of ~~such~~ the plan or study submitted to its state of domicile. However, this provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance that was defined in the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986, and that was offered before that date by a risk retention group that had been chartered and operated for not less than 3 years before that date; and

(c) a statement of registration that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) A risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or by a qualified loss reserve specialist under criteria established by the national association of insurance commissioners;

(b) a copy of each examination of the risk retention group as certified by the insurance regulatory official of the state in which the examination was conducted or public official conducting the examination;

(c) upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) ~~such~~ any information as may be required to verify the group's continuing qualification as a risk retention group under 33-11-102(7).

(3) (a) All premiums paid for coverage within this state to risk retention groups are subject to taxation at the same rate and to the same interest, fines, and penalties

for nonpayment that apply to foreign admitted insurers.

(b) To the extent that an insurance producer is used, ~~he~~ the insurance producer shall report and pay the taxes for the premiums for risks that ~~he has~~ are placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent that an insurance producer is not used or fails to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.

(4) Each risk retention group, its insurance producers, and its representatives shall comply with Title 33, chapter 18, part 2.

(5) Each risk retention group shall comply with the provisions of Title 33, chapter 18, part 2, regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding ~~such~~ the conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Each risk retention group shall submit to an examination by the commissioner to determine its financial condition if the insurance regulatory official of the jurisdiction where the group is chartered has not initiated an examination or does not initiate an examination within 60

days after a request by the commissioner. The examination must be coordinated to avoid unjustified repetition and be conducted in an expeditious manner in accordance with the national association of insurance commissioners examiners handbook.

(7) Each policy issued by a risk retention group must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by or operation of a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) A risk retention group is not allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group,

other than in the case of a risk retention group all of whose members are insurers.

(10) A risk retention group may not offer insurance policy coverage declared unlawful by the Montana supreme court.

(11) A risk retention group not chartered in this state and doing business in this state ~~must~~ shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the insurance regulatory official of any state if there has been a finding of financial impairment after an examination under subsection (6).

(12) Upon completion of registration requirements, the commissioner shall issue to the risk retention group a proper certificate of registration."

Section 15. Section 33-11-108, MCA, is amended to read:

"**33-11-108. Notice and registration requirements of purchasing groups.** (1) A purchasing group that intends to do business in this state shall furnish notice to the commissioner that:

(a) identifies the state where the group is domiciled;

(b) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;

(c) identifies the insurer from which the purchasing

group intends to purchase its insurance and the domicile of the insurer;

(d) identifies the Montana-licensed insurance producer or Montana-licensed surplus ~~insurance~~ lines insurance producer through which the purchasing group intends to place its business;

(e) identifies the principal place of business of the purchasing group; and

(f) provides information required by the commissioner to verify that the purchasing group is qualified under 33-11-102(6).

(2) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process. However, ~~such~~ the requirements do not apply in the case of a purchasing group:

(a) (i) that was domiciled before April 2, 1986, in any state of the United States; and

(ii) that was domiciled on and after October 27, 1986, in any state of the United States;

(b) (i) that, before October 27, 1986, purchased insurance from an insurer licensed in any state; and

(ii) that, since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(c) that was a purchasing group under the requirements

of the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986; and

(d) that does not purchase insurance that was not authorized for purposes of an exemption under the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986.

(3) Upon completion of registration requirements, the commissioner shall issue a proper certificate of registration to the purchasing group."

Section 16. Section 33-14-201, MCA, is amended to read:

"33-14-201. License required -- fee -- renewal of license. (1) Except as provided in subsection (4), ~~no~~ a person may not engage in the business of financing insurance premiums without first having obtained a license as a premium finance company from the commissioner. Any person who engages in the business of financing insurance premiums in the state without obtaining a license as provided under this chapter is, upon conviction, guilty of a misdemeanor.

(2) The annual license fee is $100. A license may be renewed as of January 1 each year, upon payment of the fee of $100. The license fee ~~shall~~ must be paid to the commissioner.

(3) The person to whom the license or the renewal ~~thereof~~ of the license is issued shall file sworn answers,

subject to the penalties of perjury, to ~~such~~ any interrogatories as the commissioner may require. The commissioner may, at any time, require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees, and ~~he~~ the commissioner may, in ~~his~~ the commissioner's discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if ~~he--is~~ not satisfied that any officer, employee, stockholder, or partner ~~thereof~~ who may materially influence the applicant's conduct meets the standards of this chapter.

~~(4) No---person---other---than---a---savings--and--loan association,--bank,--trust--company,--or--licensed---finance company,--credit--union,-or-resident-insurance-producer-who,-within-15-days-after--entering--into--an--insurance--premium finance--agreement,-transfers-the-agreement-to-a-licensee-or-to-any-of-the-organizations-exempt-under-this-subsection-may-engage-in-the--business--of--entering--into,--acquiring,--or-holding-insurance-premium-finance-agreements-unless-licensed-to-do-so-by-the-commissioner.~~ This section does not apply to and a license is not required of:

(a) savings and loan associations, banks, trust companies, licensed finance companies, credit unions, and resident insurance producers; or

(b) a person who, within 15 days after entering into an insurance premium finance agreement, transfers the agreement

to a licensee or to any of the organizations exempt under this subsection (4)."

Section 17. Section 33-14-305, MCA, is amended to read:

"**33-14-305. Return of unearned premiums.** (1) Whenever a financed insurance contract is canceled by a person other than the insured, the insurer shall process cancellation of the financed insurance policy on a pro rata basis. The insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) If the crediting of the return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured, except that no a refund is not required if such the excess amounts to less than $1."

Section 18. Section 33-15-303, MCA, is amended to read:

"**33-15-303. Contents of policies in general -- identification.** (1) Every policy shall specify:

(a) the names of the parties to the contract;

(b) the subject of the insurance;

(c) the risks insured against;

(d) the time when the insurance thereunder under the policy takes effect and the period during which the insurance is to continue;

(e) the premium;

(f) the conditions pertaining to the insurance.

(2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid ~~shall~~ must be included.

(3) ~~Subsections (1) and (2) of this section--shall--not apply as to surety contracts or to group insurance policies.~~

~~(4)~~ All policies and annuity contracts issued by insurers and the forms ~~thereof~~ of policies and annuity contracts filed with the commissioner ~~shall~~ must have printed ~~thereon~~ on the policy or annuity contract an appropriate designating letter or figure, ~~or~~ combination of letters or figures, or terms identifying the respective forms of policies or contracts, together with the year of adoption of ~~such~~ the form. Whenever any change is made in any ~~such~~ form, the designating letters, figures, or terms and year of adoption ~~thereon--shall~~ on the form must be correspondingly changed."

Section 19. Section 33-16-106, MCA, is amended to read:

"**33-16-106. Examination by commissioner of rating organizations, admitted insurers, officers, managers, insurance producers, and employees -- expense.** (1) (a) The commissioner ~~shall, at least once every 5 years, and~~ may, as often as may be reasonable and necessary, make or cause to be made an examination of each licensed rating organization.

He The commissioner may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory organization or group, association, or other organization of insurers ~~which~~ that engages in joint underwriting or joint reinsurance.

(b) In lieu of ~~any---such~~ an examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state or by the national association of insurance commissioners.

(c) In examining any organization, group, or association pursuant to this section, the commissioner shall ascertain whether ~~such~~ an organization, group, or association and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

(2) The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether ~~such~~ the insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable ~~thereto~~ to it. ~~Such~~ The examination ~~shall~~ may not be a part of a periodic general examination participated in by representatives of more than one state.

(3) The officers, managers, insurance producers, and employees of any ~~such~~ organization, group, association, or insurer may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation, together with all data, statistics, and information of every kind and character collected or considered by ~~such~~ an organization, group, association, or insurer in the conduct of the operations to which ~~such~~ the examination relates.

(4) The reasonable cost of any examination authorized by this article ~~shall~~ must be paid by the organization, group, association, or insurer to be examined."

Section 20. Section 33-17-231, MCA, is amended to read:

"**33-17-231. Appointment of insurance producers -- continuation and termination.** (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer, and pay the fee ~~therefor~~ as stated in 33-2-708. ~~The term of the appointment is for 1 year and runs from June 1 of each year through May 31 of the succeeding year.~~

(2) ~~Subject to annual renewal by the insurer, each such~~ Each appointment ~~shall remain~~ remains in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of

the appointment is filed with the commissioner by the insurer or the insurance producer. Termination of the insurer's authority in Montana also terminates the appointment.

(3) ~~Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its insurance producers whose appointments in this state are to remain in effect, accompanied by payment of the annual renewal fee as provided in 33-2-708. At the same time the insurer shall also file with the commissioner a termination report of all insurance producers whose appointments in this state are not to remain in effect.~~

~~(4)~~ Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of ~~such~~ the termination to the commissioner and to the insurance producer. The commissioner may require ~~of the insurer~~ reasonable proof that the insurer has given ~~such~~ notice to the insurance producer.

~~(5)~~(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause ~~thereof~~ of termination. Any information or statement contained in the notice of termination ~~shall~~ is not be

admissible as evidence in any action or proceeding against the insurer or any representative ~~thereof~~ of the insurer by or ~~in~~ on behalf of any person affected by ~~such~~ the termination."

Section 21. Section 33-17-237, MCA, is amended to read:

"**33-17-237. Notification of violation or appointment termination.** (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department. ~~If the reason of the termination is for any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall notify the insurance department of the reason and the insurer shall, upon request of the insurance department, provide information, documents, records, or other data pertaining to the termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 1, part 7.~~

(2) If the reason for the termination is any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall immediately notify the insurance department of the reason.

(3) Whenever an insurance company or an employee or representative of the company has reasonable cause to believe that a person has violated 33-17-1001 or 33-25-301, it is the duty of that entity, upon acquiring the knowledge, to notify the insurance department and provide the insurance

department with a complete statement of all relevant facts and circumstances.

(4) The insurer, employee, or representative shall, upon request of the insurance department, provide information, documents and records, or other data pertaining to the alleged violation or termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 17, part 10.

~~(2)~~(5) Any information, documents, records, or other data provided pursuant to this section is privileged and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith."

Section 22. Section 33-20-101, MCA, is amended to read:

"**33-20-101. Scope.** (1) Except as provided in subsection (2), parts 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

(2) ~~Section~~ Sections 33-20-114 and 33-20-131 ~~applies~~ apply to group life insurance and group annuities."

Section 23. Section 33-20-121, MCA, is amended to read:

"**33-20-121. Prohibited provisions -- limitations on liability.** (1) A policy of life insurance may not be

delivered or issued for delivery in this state if it contains a provision:

(a) for a period shorter than that provided by statute within which an action at law or in equity may be commenced on the policy; or

(b) that excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified in the policy in the event of death:

(i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces or of any act or hazard of war or action or of service in the military, naval, or air forces or in civilian forces auxiliary thereto or from any cause while a member of military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in military action;

(ii) as a result of aviation or any air travel or flight;

(iii) as a result of a specified hazardous occupation or occupations;

(iv) while the insured is a resident outside the continental United States and Canada; or

(v) within 2 years from the date of issue of the policy

as a result of suicide, while seriously mentally ill or otherwise. If a life insurance policy contains a dependent rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

(2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide that in the event of death under the circumstances to which the exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method on the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy ~~provides~~ does not provide for ~~no such~~ nonforfeiture benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy)~~,~~ ~~with~~ or by any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

(3) This section does not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(4) This section does not prohibit a provision that in

the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section."

Section 24. Section 33-20-127, MCA, is amended to read:

"**33-20-127. Life insurance policy with long-term care provision** or accelerated benefits provision -- ~~policy~~ **summary required.** At the time of policy delivery, a ~~policy~~ summary must be delivered to the insured for an individual life insurance policy that provides long-term care benefits or accelerated benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the ~~policy~~ summary upon the applicant's request but no later than the time of policy delivery. In addition to complying with all applicable requirements, the summary must also include:

(1) an explanation of how the long-term care benefits or accelerated benefits interact with other components of the policy, including deductions from death benefits;

(2) an illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits, if any, for each covered person;

(3) any exclusions, reductions, and limitations on ~~benefits~~ of long-term care benefits and accelerated benefits; and

(4) if applicable to the policy type:

(a) a disclosure of the effects of exercising other

rights under the policy;

(b) a disclosure of guaranties related to long-term care costs of insurance charges; and

(c) current and projected maximum lifetime benefits."

Section 25. Section 33-20-603, MCA, is amended to read:

"33-20-603. Separate accounts for life insurance or annuities. (1) Subject to the provisions of subsection (2), a ~~domestic~~ life insurer may establish one or more separate accounts and may allocate to ~~such~~ those accounts the amounts necessary to provide for life insurance or annuities and benefits incidental ~~thereto~~ to the life insurance or annuities, payable in fixed or variable amounts, or both. The amounts allocated to ~~such~~ the accounts may include without limitation proceeds applied under optional modes of settlement or under dividend options.

(2) Separate accounts for life insurance or annuities established under the provisions of subsection (1) are subject to the following:

(a) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account must be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(b) Except as provided for reserves for guaranteed benefits and funds in subsection (c):

(i) amounts allocated to a separate account and

accumulations ~~thereon~~ on the separate account may be invested and reinvested in any class of investment authorized under Title 33, chapter 2, part 8, if limitations under 33-2-806 on investments in stocks are not applicable;

(ii) the investments in the separate account or accounts may not be considered in applying the investment limitations otherwise applicable to the investments of the insurer.

(c) Except with the approval of the commissioner and under conditions relating to investments and other prescribed matters ~~as--he--prescribes~~ that recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to amount and duration and for funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account.

(d) Unless otherwise approved by the commissioner, assets allocated to a separate account must be valued at their market value on the date of valuation or, if there is no readily available market, as provided under the terms of the contract or the rules or other written agreement applicable to that separate account; however, unless otherwise approved by the commissioner, the portion, if any, of the assets of that separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (c) must be valued in accordance with the laws and rules otherwise

applicable to the insurer's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this part must be owned by the insurer, and the insurer may not be or hold itself out to be a trustee with respect to those amounts. If and to the extent provided under applicable contracts, that portion of the assets of a separate account equal to the reserves and other contract liabilities with respect to the account are not chargeable with liabilities arising out of any other business the insurer may conduct.

(f) (i) ~~No~~ A sale, exchange, or other transfer of assets may not be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(A) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; or

(B) the transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value and the transfer of securities is approved by the commissioner.

(ii) The commissioner may approve other transfers among these accounts if, in ~~his~~ the commissioner's opinion, transfers would not be inequitable.

(g) To the extent an insurer considers it necessary to comply with any applicable federal or state laws, the insurer, with respect to any separate account, including without limitation any separate account that is a management investment company or a unit investment trust account, may provide, for persons having an interest ~~therein~~ in the account, appropriate voting and other rights and special procedures for the conduct of the business of that account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business of that account."

Section 26. Section 33-22-101, MCA, is amended to read:

"33-22-101. **Exceptions to scope.** ~~Nothing in parts~~ Parts 1 through 4 of this chapter, except 33-22-107, 33-22-111, 33-22-114, 33-22-125, 33-22-130, 33-22-131, 33-22-132, [section 34], and 33-22-304, ~~shall~~ do not apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage ~~therein~~;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or

~~contracts~~ supplemental contracts that ~~thereto which~~ contain only ~~such~~ those provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard ~~such~~ contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance."

Section 27. Section 33-22-130, MCA, is amended to read:

"**33-22-130. Coverage for adopted children from time of placement -- preexisting conditions.** (1) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state ~~and that provides coverage for a family member of the insured or subscriber~~ must provide coverage for an adopted child of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted

prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means placement for adoption as defined in 40-8-103."

Section 28. Section 33-22-131, MCA, is amended to read:

"**33-22-131. Coverage for phenylketonuria treatment.** (1) Each group or individual disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state ~~and that provides coverage for a family member of the insured or subscriber~~ must provide coverage for the treatment of phenylketonuria.

(2) For ~~the purpose~~ purposes of this section, "treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

(3) These services are subject to the terms of the applicable group or individual disability policy, certificate, or membership contract that establishes durational limits, dollar limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally."

Section 29. Section 33-22-132, MCA, is amended to read:

"33-22-132. Coverage for ~~mammo~~graphy examinations. (1) Each group or individual disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state ~~and--that--provides--coverage--for--a--family--member-of-the insured--or--subscriber~~ must provide minimum mammography examination coverage.

(2) For the purpose of this section, "minimum mammography examination" means:

(a) one baseline mammogram for a woman who is 35 years of age or older and under 40 years of age;

(b) a mammogram every 2 years for any woman who is 40 years of age or older and under 50 years of age or more frequently if recommended by the woman's physician; and

(c) a mammogram each year for a woman who is 50 years of age or older.

(3) ~~These-services-are-subject-to~~ A minimum $70 payment or the actual charge if the charge is less than $70 must be made for each mammography examination performed before the application of the terms of the applicable group or individual disability policy, certificate of insurance, or membership contract that establish durational limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally.

~~A-minimum-$70-payment-must--be--made--for--each--mammography examination-performed.~~"

Section 30. Section 33-22-201, MCA, is amended to read:

"33-22-201. Format and content. ~~No~~ A policy of disability insurance ~~shall~~ may not be delivered or issued for delivery to any person in this state unless it otherwise complies with this code and complies with the following:

(1) The entire money and other considerations ~~therefor~~ for the policy ~~shall~~ must be expressed ~~therein~~ in the policy.

(2) The time when the insurance takes effect and terminates ~~shall~~ must be expressed ~~therein~~ in the policy.

(3) ~~It--shall-purport-to~~ The policy may insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who ~~shall-be-deemed~~ is the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age ~~which-shall~~ that may not exceed 19 years, and any other person dependent upon the policyholder.

(4) The style, arrangement, and overall appearance of the policy ~~shall~~ may not give ~~no~~ undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers ~~shall~~ must be plainly printed in lightfaced type of a style

in general use, the size of which ~~shall~~ must be uniform and not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

(5) The "text" ~~shall~~ must include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.

(6) The exceptions and reductions of indemnity ~~shall~~ must be set forth in the policy and, other than those contained in 33-22-204 through 33-22-215 and 33-22-217 through 33-22-231, ~~shall~~ must be printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions", except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of ~~such~~ the exception or reduction ~~shall~~ must be included with the benefit provision to which it applies.

(7) Each ~~such~~ form, including riders and endorsements, ~~shall~~ must be identified by a form number in the lower left-hand corner of the first page ~~thereof~~ of the form.

(8) The policy ~~shall~~ may not contain ~~no~~ a provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless ~~such~~ the portion is set forth in full in the policy,

except in the case of the incorporation of or reference to a statement of rates or classification of risks or short-rate table filed with the commissioner.

(9) Each individual disability policy, except for a single-premium nonrenewable policy, issued for delivery in this state on or after January 1, 1980, ~~shall~~ must contain a notice stating in substance that if the person to whom the policy is issued is not satisfied for any reason, ~~he~~ the person is permitted to return the policy within 10 days of its delivery, or ~~such~~ a longer period as the policy may provide, and to have refunded the amount of the premium paid. A policy returned pursuant to this subsection is void from the beginning."

Section 31. Section 33-22-202, MCA, is amended to read:

"33-22-202. Required provisions -- captions -- omissions -- substitutions -- order. (1) Except as provided in subsection (2) ~~below~~, each ~~such~~ policy delivered or issued for delivery to any person in this state must contain the provisions specified in 33-22-204 through 33-22-215, in the words in which the ~~same~~ provisions appear, except that the insurer may, at its option, substitute for one or more of ~~such~~ the provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each ~~such~~ provision must be preceded

individually by the applicable caption shown or, at the option of the insurer, by ~~such~~ the appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) If any ~~such~~ provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from ~~such~~ the policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in ~~such~~ a manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(3) The provisions ~~which~~ that are the subject of 33-22-204 through 33-22-215 and 33-22-217 through 33-22-232 or any corresponding provisions which are used ~~in--lieu thereof~~ in accordance with ~~such~~ the cited sections ~~shall~~ must be printed in the consecutive order of the provisions in ~~such~~ the sections or, at the option of the insurer, any ~~such~~ provision may appear as a unit in any part of the policy with other provisions to which it may be logically related, provided that the resulting policy ~~shall~~ is not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued."

Section 32. Section 33-22-1703, MCA, is amended to read:

"33-22-1703. Definitions. As used in this part, the following definitions apply:

(1) "Emergency services" means services provided after suffering an accidental bodily injury or the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that without immediate medical attention the subscriber or insured could reasonably expect that:

(a) ~~his~~ the subscriber's or insured's health would be in serious jeopardy;

(b) ~~his~~ the subscriber's or insured's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(2) "Health benefit plan" means the health insurance policy or subscriber arrangement between the insured or subscriber and the health care insurer that defines the covered services and benefit levels available.

(3) "Health care insurer" means:

(a) an insurer that provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a health maintenance organization as defined in

33-31-102;

(d) a fraternal benefit society as described in 33-7-105; or

(e) ~~an administrator as defined in 33-17-102; or~~

~~(f)~~ any other entity regulated by the commissioner that provides health coverage.

(4) "Health care services" means health care services or products rendered or sold by a provider within the scope of the provider's license or legal authorization or services provided under Title 33, chapter 22, part 7.

(5) "Insured" means an individual entitled to reimbursement for expenses of health care services under a policy or subscriber contract issued or administered by an insurer.

(6) "Preferred provider" means a provider or group of providers who have contracted to provide specified health care services.

(7) "Preferred provider agreement" means a contract between or on behalf of a health care insurer and a preferred provider.

(8) "Provider" means an individual or entity licensed or legally authorized to provide health care services or services covered within Title 33, chapter 22, part 7.

(9) "Subscriber" means a certificate holder or other person on whose behalf the health care insurer is providing

or paying for health care coverage."

Section 33. Section 80-2-203, MCA, is amended to read:

"**80-2-203. Participation in program -- tax.** (1) ~~Any taxpayers~~ A taxpayer or ~~associations~~ an association of taxpayers engaged in the growing of crops other than specified ~~herein~~ in this part or other agricultural or horticultural products subject to injury or destruction by hail may, by ~~their~~ individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject ~~thereto~~ to this part~~,~~. ~~and in such event such~~ The risks may be classified by the board and suitable levies may be imposed as ~~may be~~ agreed upon by the board and ~~such~~ the taxpayers~~,~~. ~~whereupon such~~ The taxpayers ~~shall be~~ are entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) Every farmer taxpayer who signifies ~~his~~ a desire to become subject to the provisions of this part shall file in the office of the county assessor the properly filled out form not later than August 15 and ~~shall be~~ is chargeable with the tax ~~hereinafter~~ provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of this part. ~~Such~~ The application for hail insurance ~~shall be~~ is in full force and effect at ~~noon~~ 12:01

a.m. the day immediately following the acceptance of the same application by the county assessor.

(3) This part ~~shall~~ may not be so construed as to empower anyone except the actual owner of the land to make ~~such~~ the land subject to the hail tax provided in this part."

NEW SECTION. **Section 34.** **Preexisting conditions.** (1) A policy or certificate of disability insurance may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 5 years preceding the effective date of coverage of an insured person. The condition may only be excluded for a maximum of 12 months.

(2) An insurer may use an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on that application, perform underwriting in accordance with the insurer's established underwriting standards.

SECTION 35. SECTION 15-16-601, MCA, IS AMENDED TO READ:

"15-16-601. **Taxes or penalties illegally collected or duplicate taxes to be refunded.** (1) (a) A taxpayer is entitled to a refund on:

(i) taxes, interest, penalties, or costs paid more than once or erroneously or illegally collected if an appeal

pursuant to 15-1-402 was not available;

(ii) the taxes paid for which a refund is allowed under 15-16-612 or 15-16-613; or

(iii) the portion of taxes paid that were mistakenly computed on government bonus or subsidy received by the taxpayer.

(b) Subject to the provisions in subsections (4) and (5), the county treasurer may, by order of the board of county commissioners, pay the refund to the taxpayer.

(2) (a) The refund applies to any payment that has been made to the state treasurer as provided in 15-1-504 if the board of county commissioners determines that a portion of the money paid should be refunded as provided in this section.

(b) The board of county commissioners may order the county treasurer to refund to the taxpayer the portion of the taxes, interest, penalties, and costs paid to the state treasurer.

~~(c)--The--county--clerk--and-recorder-shall,-at-the-time for-filing-the-report-required-by-15-1-505,-certify--to--the state--auditor,--in--the--form--as--the--state--auditor--may prescribe,--the--amounts-refunded.-In-the-next-settlement-of the-county-treasurer-with-the-state,-the-state-auditor-shall give-the-county-treasurer-credit-for-the-state's-portion--of the-amounts-refunded.~~

(3) When a part of the taxes, interest, penalties, or costs referred to in this section were levied in behalf of a school district or municipal or other public corporation and collected by the county treasurer, the taxes must be refunded upon the order of the board of county commissioners.

(4) (a) An order for the refund of any taxes, interest, penalties, or costs under this section may not be made except upon a claim filed by the taxpayer who has paid the taxes, interest, penalties, or costs or his guardian or, in case of his death, by his executor or administrator.

(b) A taxpayer may file a claim for taxes, interest, penalties, or costs paid during the immediately preceding 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(c) Except as provided in subsections (6) and (7), if a refund pursuant to subsection (1) is ordered, the board of county commissioners shall order a refund for taxes illegally collected or for any duplicate taxes paid during the immediately preceding 10 years regardless of when the taxes were first illegally collected or when the duplicate taxes were first paid.

(5) (a) In the order to refund taxes as provided in subsection (4)(c), the board of county commissioners shall determine the method of repayment. The board may:

(i) refund the entire amount due the taxpayer within 60 days after the date of the order; or

(ii) refund the amount due the taxpayer in annual installments, for a period not to exceed 10 years.

(b) If the refund is made in annual installments as provided in subsection (5)(a)(ii), the taxpayer is entitled to interest on the unpaid balance at the greatest interest rate in effect on October 1 of each year of the installment period received on public money invested by the county as provided in Title 7, chapter 6, part 2; Title 7, chapter 6, part 27; or 17-6-204.

(c) In satisfying the requirements of subsection (5)(a)(ii), the first annual installment must be paid within 60 days after the date of the order by the board of county commissioners. Subsequent annual installments must be paid on the first business day following October 1 of the year the installment is due.

(d) The treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the annual installment of the taxpayer refund and costs for which the taxing jurisdiction is proratably responsible.

(6) The board of county commissioners shall refund any tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for any duplicate taxes paid as determined

by the department of revenue. The refund is subject to the provisions of subsections (4) and (5).

(7) The board of county commissioners shall refund any net or gross proceeds tax, penalty, or interest when the department of revenue notifies the board that an overpayment occurred. The department shall determine the amount of overpayment. The refund is subject to the provisions of subsections (4) and (5), but no refund may be granted for any taxes paid more than 5 years prior to the date the claim was received.

(8) All refunds ordered to be paid by the board of county commissioners must be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made from the fund.

(9) Upon the entering of judgment under 15-2-306, the county commissioners of the affected county shall order a refund of the portion of the taxes that the state tax appeal board has judged should be refunded."

NEW SECTION. **Section 36.** Repealer. Sections 15-1-505, 33-17-206, and 33-22-216, MCA, are repealed.

NEW SECTION. **Section 37.** Codification instruction.

[Section 34] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 34].

NEW SECTION. **Section 38.** Effective date. [Section 33 and this section] are effective on passage and approval.

-End-